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AN EXAMINATION OF THE IMPACT OF DUNCAN ERA HIGHER EDUCATION  
POLICY AS PERCEIVED BY PROPRIETARY SCHOOL LEADERSHIP

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By

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A DISSERTATION IN PRACTICE

Submitted to the faculty of the Graduate School of Creighton University in Partial  
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## Abstract

Proprietary institutions of higher education, more commonly referred to as “for-profit” colleges and universities, have been a polarizing phenomenon in U.S. post-secondary education. Much of the literature is partisan and deeply ideological in nature making it difficult for interested parties to understand the role that these institutions do or should play in American higher education. As federal and state governments have sought to regulate the sector, opponents and proponents for the sector have been vocal in their positions leaving regulators and proprietary education leaders in a difficult position. This phenomenological qualitative study works describes the perception of proprietary education leaders regarding the federal regulatory oversight of the proprietary sector of higher education; voices not present in the vast majority of literature. In particular, this study sought to understand perceptions of leaders who experienced the Duncan Regulatory Era and its legacy impact on the sector. Key to this study is understanding how proprietary education leaders perceive the impact that federal regulation has on low-income and first-generation minority student populations, generally among the most vulnerable student groups in higher education. Seven primary themes emerged, the most noteworthy is the perception that many of the regulations, including those no longer in effect, have served to limit opportunities for low-income students. Utilizing the study data as well as relevant literature, this work provides insights from sector leaders and a framework for proprietary education leaders as well as policy makers on how to approach future regulatory negotiations and navigate future challenges in proprietary higher education.

## **Dedication**

To my father who inspired a curiosity of the world around me and my daughters who continue to reintroduce the world anew. In addition, I wish to acknowledge my wife who holds me to standards of authenticity as I strive to navigate this unfolding of the world.

### **Acknowledgements**

I wish to convey a special thank you to Dr. W. Wayne Young, Jr. for serving as committee chair for this study and patiently pushing the work forward. I also wish to thank Dr. Cheryl N. Ross for serving on the committee and sharing her insight and knowledge. Furthermore, I wish to express my appreciation to the study participants. These higher education leaders were willing to take part in a study that many others feared to participate in given the difficult regulatory and political climate. While all participants will remain anonymous, they know who they are and hopefully understand the value they have brought in expanding the contemporary body of literature on the regulation of proprietary education. Finally, a thank you to former Education Secretary Arnie Duncan for taking a few minutes during an otherwise busy evening in Washington D.C. to briefly discuss this study. And a special thank you to Mr. Stewart Hagberg from Pluralsight for making the introduction to the Secretary. As Secretary Duncan conveyed to those institutions who serve students with integrity and within the confines of the regulatory landscape, “the world is your oyster.”

## Table of Contents

CHAPTER ONE: INTRODUCTION.....	1
Introduction and Background .....	1
Purpose of the Study .....	5
Research Question .....	6
Aim of the Study.....	7
Methodology Overview .....	7
Definition of Relevant Terms .....	8
Delimitations and Limitations.....	11
Leader’s Role and Responsibility in Relation to the Problem.....	12
Summary .....	14
CHAPTER TWO: LITERATURE REVIEW .....	15
Introduction.....	15
A History of Federal Regulation of the Proprietary Education Sector .....	17
<i>Early Development of Proprietary Education in America</i> .....	17
<i>Early Federal Regulation of Proprietary Education</i> .....	20
<i>The Modern Era of Federal Regulation of Proprietary Education</i> .....	25
<i>A Description of the Duncan Era</i> .....	35
<i>The Gainful Employment Rule</i> .....	38
<i>State Authorization</i> .....	42
<i>Borrower Defense to Repayment Act</i> .....	43
The Impact and Efficacy of the Duncan Era Regulations.....	50
<i>Specific Impact on Low-Income and Minority Students</i> .....	50

The Legality & Constitutionality of Federal Regulation of the Private Sector .....	63
Concluding Thoughts on the Duncan Era Regulations.....	67
Leadership Theory .....	70
Summary.....	79
Introduction.....	81
Research Question .....	81
Research Design.....	82
Data Sources/Proposed Participants and Recruitment.....	84
Ethical Considerations .....	88
Summary.....	90
CHAPTER FOUR: FINDINGS.....	92
Introduction.....	92
Review of Central Research Question .....	92
Review of Scope of Study.....	93
Participants.....	94
Presentation of Findings .....	97
Theme Two: Regulations Driven by Ideology.....	112
Theme Three: Regulations Enacted in Politically Charged Environment.....	117
Theme Four: Compliance Creates Critical Resource Strain.....	127
Theme Five: Culture of Compliance.....	132
Theme Six: Regulatory Harm to Students Outweighs the Benefits.....	138
Theme Seven: Particular Impact on Low-Income and Minority Students .....	144
Analysis and Synthesis of Findings .....	155

Summary .....	156
FIVE: CONCLUSIONS AND RECOMMENDATIONS .....	158
Introduction.....	158
Purpose of the Study .....	159
Aim of the Study .....	160
Proposed Recommendations and Solutions .....	161
Recommendation Number One: Build Relationships of Trust with Regulators.....	164
Recommendation Number Two: Proprietary Education Leaders Take Inventory of the Role their Institutions Play in Educating Low-Income and Minority Students and Labor to Remove Barriers Impacting These Students. ....	180
Recommendation Number Three: Utilize a Values Hierarchy and Common Values Alignment in Order to Facilitate Productive Policy Discussions with Regulators. .	199
Recommendation Number Four: Continuing a Culture of Compliance .....	219
Recommendation Number Five: Establish A Standard of Regulatory Equity .....	224
Implications.....	240
Practical Implications.....	242
Implications for Future Research.....	248
Implications for Leadership Theory and Practice.....	249
Summary of the Study .....	256
Appendix A.....	289
Bill of Rights for Research Participants.....	289
Appendix B .....	290

Participant Research Script.....	290
Appendix C.....	292
Appendix D.....	293
Arnie Duncan’s Statements (Whitman & Duncan, 2018). .....	293

**List of Figures**

Figure 1. Student Loan Cohort Default Rates.....	28
Figure 2. Comparison of Current Default Calculation Method and Previous Method.....	30
Figure 3. Student Populations in 4-Year Degree Granting Institutions.....	52
Figure 4. Model of Trust.....	183
Figure 5. Values Hierarchy Diagram.....	207
Figure 6. Comparative Values Hierarchy Diagram.....	208
Figure 7. Common Value Alignment Diagram.....	209
Figure 8. Common Value Impasse Diagram.....	214
Figure 9. Common Value Ambiguity Diagram.....	215
Figure 10. Programs Not Meeting Gainful Employment Standards.....	230
Figure 11. Cross Adaptive Higher Education Policy Model.....	234
Figure 12. Non-Cross-Adaptive Higher Education Policy Model.....	236
Figure 13. Proprietary Education Primary Functions Model.....	243

**List of Tables**

Table 1. Borrower Defense to Repayment Outline.....	46
Table 2. Share of Borrowers by Demographics and Default Status.....	58
Table 3. Research Participants.....	96
Table 4. Regulatory Differences by Higher Educational Sector.....	228

## CHAPTER ONE: INTRODUCTION

### **Introduction and Background**

In 2010, as part of the Health Care and Education Reconciliation Act, the Federal Direct Loan Program (FDLP) was implemented by the United States Department of Education under the leadership of Secretary Arne Duncan ushering in a new era of post-secondary regulation. The FDLP was a departure from the traditional Federal Student Loan program where banks and other private sector lending institutions provided student loans that were guaranteed by the federal government in the case of default (Pentis, 2017). A pilot version of the FDLP had been running alongside the traditional student loan program under the previous three U.S. presidential administrations playing a minor role in student lending. However, in 2010 the FDLP became the sole federal loan program effectively removing banks and other private lending institutions from the student loan process. Rather than the federal government serving as a guarantor on loans from private lending institutions, the new regulations resulted in the federal government serving as the direct lender using funds from the U.S. Treasury. The FDLP has provided the Department of Education with stronger regulatory control of institutions participating in Title IV Funding and has contributed to Secretary Duncan's legacy as "the most powerful federal education chief in the department's history" (Strauss, 2015).

As is often the case, strings are attached when any organization accepts federal funds, even in a secondary capacity, and this has proven true in higher education (Pew Charitable Trust, 2015). Federal funds are generally distributed with the understanding that some level of accountability regarding use accompanies the receipt, often taking the form of regulatory controls (Lawson, 2013). While some of these accountabilities will be

discussed throughout this study, it is important to identify early that notable regulatory actions taken during the Duncan era were solely aimed at proprietary colleges and universities. These institutions are also known as career, private sector, or for-profit schools; however, the official designation by the U.S. Department of Education of “proprietary” will be primarily used throughout this work. Furthermore, with the appointment of Betsy DeVos as the U.S. Secretary of Education by the Trump administration in 2017, some consider the Duncan Era to have closed and a new one begun as evidenced by the rescinding of key regulatory measures advanced after the FDLP enactment (Abdul-Alim, 2017; United States Department of Education, 2018). Therefore, an examination of this particular era of heightened education regulation will prove useful as future education policy approaches will fluctuate according to advances in academia as well as partisan politics.

The FDLP and the subsequent regulations afforded from the centralization of Title IV administration such as the Gainful Employment and Borrower Defense to Repayment rules targeted exclusively toward proprietary colleges and universities, have created a considerable amount of controversy. For several years many of these regulations were challenged in the courts and debated in congressional committees ultimately leading to a very complex negotiated rulemaking process. The debate was along partisan lines and both sides contended that they were looking out for the best interest of America’s students, particularly low-income and minority students. Different advocacy groups, including the Black Chamber of Commerce, argued that the regulations closed doors and diminished opportunities for the African American community to obtain a post-secondary education (Alford, 2014), while others argue that the regulations

protected minority students from underperforming institutions including some who might be predatory in their recruitment practices (Pearlman, 2015).

After fierce opposition, and failed attempts through congress, the regulations were eventually taken out of the hands of elected lawmakers and put into effect by unelected bureaucrats through the negotiated rulemaking process. While the process was openly criticized as undemocratic, the Department of Education made a show of force in their enactment of these regulations, making it clear that the measures were constitutional and enforceable including a federal court victory (*Association of Private Sector Colleges and Universities v. Duncan*, 2015). Consequently, several institutions failed to live up to certain components of these regulations. These failures coupled with market challenges resulted in many institutions closing, including the large national chain ITT Technical Institute in 2016. ITT joined the ranks of hundreds of proprietary postsecondary campuses and became part of the statistic of one in every six proprietary institutions closing down in the wake of the Duncan Regulatory Era (Marcus, 2018). Additionally, the nation's largest institutional accrediting body, the Accrediting Council for Independent Colleges and Schools, who primarily accredited proprietary colleges and universities, had their recognition revoked by the U.S. Department of Education during the Duncan Era leaving hundreds of proprietary institutions for a time without an accreditor (United States Department of Education, 2016).

Understanding the impact of the Duncan Era policies and regulatory approaches to higher education governance as perceived by proprietary education leaders may assist future leaders in at least two key areas. The first is the historic lesson of compliant institutional leadership. As this study demonstrates, institutions who held compliance

near the top of their values hierarchies fared better under heightened regulatory scrutiny than those who took a casual approach. Second, proprietary education leaders have the opportunity to learn from past failures of many in the sector in developing working relationships of trust with policy makers. The data from this study suggests that future policy dialogue must not resemble that of the past and proprietary education leaders must play the lead role in aiding policy makers to understand the impact of certain regulations, particularly those which reduce access to higher education for low-income and first-generation minority students.

### **Statement of the Problem**

During the Duncan Era in higher education policy, strong regulatory measures were enacted as well as enforced and the consequences for failing to adhere proved severe for hundreds of now defunct college campuses across the nation (Iloh, 2016). While a considerable amount of literature exists on the regulations introduced under Secretary Duncan's tenure, most authors have focused on the merits of the rules or their impact on student loan debt repayment. Consequently, a hole exists in the current body of literature and the perceptions of institutional leaders regarding these regulations is needed to better understand this regulatory era. In particular the perceptions of those leaders who managed to excel in this difficult environment helps to round out the current body of literature. With the future higher education regulatory landscape in motion, there is value in learning how successful leaders perceive compliance issues and what work they have done to remain compliant, particularly in areas where regulatory parameters led to narrow operating space such as the Gainful Employment and 90/10 Rules as described in the literature review. Furthermore, in an era of departure from the hyper-regulatory

environment under the Trump and DeVos approaches to private sector education (Abdul-Alim, 2017), the perception of leaders who have navigated the Duncan regulatory landscape will prove insightful in analyzing its legacy and impact. Additionally, these perceptions may prove useful in determining possible future regulatory options and considerations for policy makers. Finally, the approaches taken by these leaders in servicing large percentages of America's low-income and first-generation minority students under these regulatory controls, may be instructive for leaders across the post-secondary academic landscape. Understanding the impact of these heightened regulatory approaches in higher education governance will provide proprietary education leaders with a pathway for compliant institutional leadership and policy makers with a frame of reference for future regulatory approaches.

### **Purpose of the Study**

The purpose of this phenomenological qualitative study was to describe the perceptions of higher education leaders of proprietary institutions of the Duncan Regulatory Era. These insights will assist in understanding proprietary institution leaders' perceptions of:

1. The ramifications of the regulations on institutional stakeholders.
2. How these regulations may inform future higher education policy decisions.
3. How institutions may achieve compliant leadership under future regulatory scrutiny.
4. If the Duncan Era regulations ultimately have proven beneficial to students up to this point in time, particularly low-income and minority student populations

who are often referenced by proponents and opponents of the Duncan Era regulations.

As detailed in Chapter Two, much of the existing literature emerged during the formation of the regulations and served to champion or oppose the merits by arguing for or against what were, at the time, forthcoming policies. Naturally, many of the authors were policy analysts, lobbyists or other representatives from special interest groups who had a particular stake in one side or the other. Relatively few contributions have been made via peer reviewed research or other academic channels. This study enhances the existing literature by providing a retrospective analysis from those who were required to directly lead institutions and experienced firsthand the regulatory impact of the Duncan Era; voices that are not currently present in the majority of existing literature.

### **Research Question**

To aid this phenomenological qualitative study, the following research question served to guide the work: What are the perceptions of proprietary higher education leaders who worked in proprietary institutions during the Duncan Regulatory Era? Within this research question four key sub-questions also guide this study. These are:

1. How do proprietary education leaders describe the Duncan Regulatory Era's impact on the operations of their institution?
2. Do proprietary education leaders consider the policies of this era beneficial to students?
3. How do proprietary education leaders describe the impact of these regulations on low-income and minority student populations served in large measure by proprietary education institutions?

4. What approaches to regulatory compliance should leaders of proprietary institutions take under future conditions of heightened oversight?

### **Aim of the Study**

The aim of this study is to provide perspective for higher education leaders, school owners, and governing boards that will aid in regulatory compliance, and regulatory dialogue as well as provide insight on how to engage with policy makers in future regulatory eras. Examining the lived experiences and insights of proprietary education leaders during an era of heightened regulatory scrutiny serves as a tool for institutions working to maintain federal regulatory compliance and prepare for future policy discourse.

### **Methodology Overview**

Interviews were conducted with university leaders working in four-year proprietary degree granting institutions and responsible for leading regulatory compliance. Utilizing connections with post-secondary association and federation leadership, participants were invited to join a telephone interview. Open ended questions were asked designed to determine the leader's perceptions of the Duncan Regulatory Era, institutional challenges in meeting the regulatory demands of the era and their lasting legacy, approaches required to successfully navigate heightened regulatory environments, the impact of the era on institutional stakeholders, and the true impact on students, especially low-income and minority student populations. Creswell (2009) suggested that the goal of qualitative researchers is to reach a point of saturation, where adding additional participants to the study will not achieve new perspectives. For a qualitative

phenomenological study, Creswell (2009) suggests between 5 to 25 participants. In this particular study, 12 participants was determined adequate for reaching saturation.

### **Definition of Relevant Terms**

This section highlights and defines key terms critical to this study.

*90/10 Rule:* A regulation predating the Duncan Regulatory Era formerly known as the 85/15 rule. The 90/10 Rule requires that private sector post-secondary institutions derive no more than 90% of their revenue from Federal Title IV sources, such as loans and grants (Lee & Looney, 2019). Some institutions serving low-income populations have argued that the only way to remain compliant is by keeping tuition rates 10% above the annual maximum allowable Title IV limit. Some institutions have complained that they might be more competitive if they lowered tuition, yet could not continue serving low-income students and remain compliant if tuition rates were lower than the maximum allowable Title IV limit (Kantrowitz, 2013). The Gainful Employment regulation enacted during the Duncan Regulatory Era presented a challenge for institutions who felt caught between the rule's forcing of lower tuition rates and the 90/10 rule, which some argued forced tuition rates higher. These bookend regulations have presented a challenging climate for institutions servicing low-income students (Kamenetz, 2015).

*Borrower Defense to Repayment:* A regulation added to the Higher Education Act in 1994 allowing students to petition for loan repayment relief in the event their school defrauded them. During the Duncan Regulatory Era, the Borrower to Defense Repayment was strengthened creating substantive punitive measures for institutions not in compliance with the initiative's regulatory standards (McCann, 2017). The enhancements proved controversial in that no considerations given to differentiations in institutional "intent" were provided within the regulatory language. The absence of this

delineation in effect ran the risk of equating unintentional error on the part of an institution or its employees with intentional deceit, thereby creating a considerable climate of risk for smaller institutions unable to absorb the financial impact of the punitive consequences prescribed for crossing a certain threshold of student grievances (McCann, 2017). The added provisions to the Borrower Defense to Repayment regulation also created concerns that student borrowers might abuse the system and file grievances that would not have been considered under the previous iteration of the rule, thereby jeopardizing their institution's fiscal viability. At the end of her first year in office, Betsy DeVos had in excess of 95,000 unprocessed grievances through the Borrower to Repayment grievance channels. After multiple lawsuits, DeVos eventually introduced a new methodology in which to process grievances (Douglas-Gabriel, 2020).

*Duncan Regulatory Era:* The period of time between the 2010 implementation of the Federal Direct Loan Program (FDLP) and the early period of DeVos' tenure as Education Secretary. This era was primarily led by Secretary of Education Arne Duncan, although it also includes the brief tenure of his successor, John King Jr., who enforced and executed many of the post FDLP regulatory changes during his 14 months in office. During this era, hundreds of campuses were closed and the recognition by the U.S. Department of Education of the largest accreditor of private sector colleges and universities (ACICS) was revoked. Some applaud the era as a clearing of "bad actors" in proprietary education while others argue it was an era of federal overreach (Marcus, 2018).

*First-Generation Minority Student:* Minority students who are the first in their family to attend an institution of higher education. According to White (2016), students

who fit this description are at higher risk for not completing their post-secondary studies than minority counterparts who come from higher income families or families with multi-generational college graduates. From a proprietary regulatory standpoint, understanding that proprietary institutions serve higher populations of low-income first-generation minority students adds complexity to a regulatory analysis of the sector.

*Gainful Employment Rule:* A post Federal Direct Loan Program regulation proposed by the United States Department of Education in 2010. The rule only applied to proprietary institutions of higher education. The regulation required academic programs to maintain a graduate debt to earnings ratio of 8 percent or less of personal earnings or less than 20 percent of discretionary earnings. Failure to meet this ratio would result in the program being rendered ineligible to participate in federal Title IV funding (United States Department of Education, 2016). The rule presented a considerable challenge for vocational programs, such as cosmetology or dental assisting, where earnings are relatively low upon graduation. Betsy DeVos rescinded key components of the Gainful Employment Rule during her tenure as Education Secretary.

*Low-Income Student:* A student whose Federal Expected Family Contribution (EFC) is zero. At present students in households earning an annual income of \$25,000 or less, automatically qualify as zero EFC. The EFC formula is derived from the Free Application for Federal Student Aid (FAFSA) and determines how much aid a student qualifies for. Students with a zero EFC calculation have historically been eligible for full Federal Pell Grants and other assistance including Subsidized Stafford Loans, Federal Supplemental Educational Opportunity Grants, the recently discontinued Federal Perkins Loans, and Federal Work Study.

*Post-Secondary Education:* Education beyond the secondary or high school level, generally including college, university, or professional vocational studies.

*Proprietary Institution:* A college or university that meets the United States Department of Education's designation of "Proprietary," meaning it is not public, or private not for-profit. Often times these institutions are referred to by their tax status of "for-profit" or "market-driven" institution. A movement during the Duncan Regulatory effort by industry associations popularized the term "Private Sector Institution" with the aim of limiting the stigma associated with the term "For-Profit."

*Title IV Funding:* A federal program providing student loans and grants to eligible college students. Institutions of higher education must meet certain regulatory guidelines in order for their programmatic offerings to participate in the Title IV Programs.

### **Delimitations and Limitations**

Delimitations include the existence of a range of higher education institutional type, such as vocational training centers, or graduate and professional schools impacted by the Duncan Era Regulations. Leaders of a medical school may perceive these regulations differently than leaders of a chain of cosmetology schools. A dental assisting school might perceive the regulatory impact differently than a law school. Furthermore, proprietary universities and colleges are accredited differently, including national accreditation and the more traditional regional accreditation bodies. Others, though outside the scope of this study are not accredited at all. Nationally accredited schools such as the now defunct ITT Technical Institute and Corinthian Colleges have experienced different challenges than regionally accredited universities such as the University of Phoenix or Strayer who are among the largest and well attended in the

sector. For these reasons, only executive leaders offering four-year degrees were interviewed.

The biases of leaders who may have experienced institutional difficulties as a result of federal regulation may have had an impact on their answers. Numerous lawsuits and other activist responses targeting the Duncan Era regulations have been organized by proprietary school associations and some institutions themselves have lead efforts of this type to limit, slow, defund, or eliminate these regulations. It was likely that participants had a familiarity with these efforts potentially leading to a level of bias. In addition, a leader's political leanings or ideology including their views on the role of government regulation, may influence the way in which they perceive the intent and effect of the regulations both in their personal experience as well as for the collective proprietary education sector.

### **Leader's Role and Responsibility in Relation to the Problem**

The problem must be understood through a leadership lens. The phenomenological qualitative data produced by this study suggests that the challenges with institutions that have failed from a regulatory standpoint, particularly institutions where the failure included financial mismanagement, rest squarely on the shoulders of institutional leadership. None of the study participants believed that institutional closures were solely the result of regulatory controls. Rather federal regulatory controls, including those introduced in the Duncan Era were perceived to have exacerbated an already challenged sector of higher education. While the DeVos era has taken a different course than the Duncan era, proprietary college regulation is likely to remain a topic of interest. It is possible that the duration of the Trump administration is simply a stay of execution

and opponents of the sector will resume heightened regulatory approaches once the political climate changes (Duprey, 2017). Leaders across all types of organizations impacted by the political climate and election cycles must exercise caution and remain vigilant in areas of regulatory compliance during eras where the political environment is not particularly hostile. These ebbs serve as an opportunity for leaders to prepare and insulate their organizations for a long-term regulatory climate change.

Leaders in proprietary education also have the opportunity to seek a centrist solution. The leadership of Adtalem Global Education, a parent company for some of the nation's largest private sector institutions including Chamberlain College of Nursing and Ross University School of Medicine, has, for example, instituted a series of self-regulatory measures that exceed ratios set forth by the Department of Education such as adhering to an 85/15 ratio of federal funds making up revenue as opposed to the required federal 90/10 ratio (Douglas-Gabriel, 2016). Adtalem CEO Lisa Wardell has stated that these institutions are seeking sustainable operation and "voluntarily making for the long term, and it underscores our commitment to finding solutions to the issues facing higher education today. This is part of a broader effort to improve our policies and demonstrate the quality and value of our programs" (Douglas-Gabriel, 2016).

While not all institutions have the luxury of self-regulating due to the student demographics they serve, their fiscal health, or the nature of their programmatic offerings, there appear to be opportunities for the proprietary education sector to develop common sense regulations in conjunction with regulators that may satisfy current critics who are waiting for future opportunities to further regulate the industry. This will be a call that sector leadership will need to make collectively, potentially requiring certain

financial interests to be sacrificed to ensure long-term viability. Chapter Five provides some recommendations for proprietary education leaders and policy makers to work together in achieving common sense regulation.

### **Summary**

As private sector colleges and universities continue to play a large role in servicing non-traditional students, particularly minority and low socio-economic student communities, compliant leadership is more important than ever if an institution is to truly serve a vulnerable demographic and distinguish itself from institutions who have allegedly used predatory practices. On the other hand, it has been argued that the regulatory landscape designed to weed out bad players creates difficult conditions for institutions with integrity to operate (Sheffield, 2015). This study provides insight into how leaders perceive this challenging environment, both in recent past and current state, and what they believe should be done in leading the sector into the future. The study also outlines recommendations for proprietary education leaders to approach regulatory challenges moving forward.

## CHAPTER TWO: LITERATURE REVIEW

**Introduction**

To support this study and aid in an understanding of the Duncan Era of proprietary school regulation, a review of existing literature is useful. What is missing in the current body of literature is an examination of the viewpoint of those personally responsible for navigating the regulatory landscape of the Duncan Era. No apparent studies exist which provide insight into specific leadership viewpoints by those who operated private proprietary post-secondary institutions during the Duncan Era. This research works to round out the understanding and impact of this regulatory era by introducing these particular voices to the broader conversation.

Despite the lack of phenomenological literature on the lived experience of proprietary education leaders, a fair amount of literature exists on the sector. A summary of the literature examined is provided in this chapter and categorized as follows:

- *A history of the regulation of proprietary institutions of higher education in the United States.* To aid in a contextual understanding of today's regulatory environment, a body of literature is presented through an historical chronology of proprietary education regulation and how it has evolved over time through the Duncan Era and its current and future impact on subsequent regulatory eras.
- *A description of the Duncan Regulatory Era.* Understanding how the Duncan Era regulations furthered the aim of earlier rules and in what ways they departed from historical approaches to regulating proprietary education is useful from a contextual perspective and key to understanding the challenges to sector leadership.

- *An examination of equitable administration of the Duncan Era regulations.* There exists disagreement as to whether or not proprietary schools should have regulatory accountabilities augmented beyond those required of private non-profit or public colleges and universities.
- *The impact and efficacy of the Duncan Era regulations.* Researchers, politicians, and federal bureaucrats alike are divided on whether or not the Duncan Era regulations have been helpful in curbing student loan default and excessive student loan debt along with a handful of secondary problems, not explicitly addressed in the regulatory language. The term secondary is used in this sense, not to relegate these additional concerns to a lower level of importance. Rather, the aim is to call attention to consequences of the regulations that were either unintended or not specifically called out as a stated purpose by the regulatory authors. These would include adverse impact on low income and minority students, the migratory conversion of proprietary schools to non-profits, and the move by several traditional colleges and universities to merge with for profit schools or adopt proprietary school models of recruitment and course delivery in the wake of mass institutional closures in the proprietary education sector.
- *The legality and constitutionality of the federal regulation of the private sector.* Some of the literature arguing against the Duncan Regulatory Era does so through the lens of abusive federal bureaucratic overreach into the private sector.
- *Leadership theory.* What theory guides this research and leaders working under the Duncan Era regulations?

### **A History of Federal Regulation of the Proprietary Education Sector**

Bennett et al, (2010) have argued that, “Historically, for-profit institutions have been the first to step in when an instructional vacuum has existed, created by the inability or unwillingness of the educational establishment to adapt to the changing needs of students” (Bennett et al., 2010, p. 8). Understanding this history and its associated literature provides a useful backdrop for understanding the phenomenon of heightened regulatory scrutiny during the Duncan Era. A narrow body of literature exists detailing the early history of proprietary education in America and how, as Bennett et al. (2010) articulated, adaptation to market needs has driven the success of these institutions. Yet, according to some literature sources, accessibility to various types of federal funds have resulted in some proprietary institutions diluting the perceived value of market driven education by abusing federal programs (Shireman, 2017; Whitman, 2017). A review of this literature serves to provide foundational context and perspective useful to the broader understanding of the modern era of proprietary education regulation including the regulatory understanding central to this body of work.

#### ***Early Development of Proprietary Education in America***

During Colonial America, most higher education institutions, including William and Mary, Harvard, and Yale were subsidiaries of organized religion. Consequently, their curriculum centered on theology, philosophy and ancient languages (Bennett et al., 2010; Ruch, 2001). Classical education remained a staple for the colonial elite; however, the emerging market-based economy demanded training for craftsmen, merchants, farming, engineering and other trades deemed economically necessary for the emergence of a new middle class (Bennett et al., 2010; Breneman et al., 2006; Ruch, 2001). Proprietors

ranging from clergy to experienced tradesmen subsidized their income by offering formal training and apprenticeship programs (Ruch, 2001). It was in the early Dutch settlements of Colonial America, particularly Pennsylvania, where for-profit training programs were established and began to develop as the predecessors of today's proprietary colleges and universities (Ruch, 2001). These courses were often offered after working hours and best known for their curriculum in surveying and accounting along with other vocational offerings essential to the local economies. These small for-profit schools filled a market void not addressed by the traditional or elite colleges and universities of the era (Bennett et al., 2010) and allowed students to attain skills leading to better employment and economic advancement (Ruch, 2001).

Benjamin Franklin was perhaps the most influential figure to recognize the value of vocational or career-based education and circulated his influential essay entitled "Proposals Relating to the Education of Youth" (1749). Franklin detailed what he believed to be a disconnect between market and employment needs and much of the day's higher education curriculum. Through this essay, Franklin successfully persuaded several prominent Philadelphia citizens to assist in the founding of the Academy and Charitable School in the Province of Pennsylvania later named the University of Pennsylvania. Franklin served as President of the institution until 1755. Influenced by the Pennsylvania Dutch proprietary schools, Franklin worked to educate youth in leadership, business and civic service; subjects he deemed critical for the emerging colonies. While these subjects are commonplace in today's higher education system, they were considered a noteworthy departure from a classic college experience. For this reason, Franklin's successor would steer the curriculum of the future Ivy League

University toward more traditional academic approaches (University of Pennsylvania, n.d.). While Franklin remained a trustee until his death, he deemed his endeavor to incorporate vocational training into the higher education system of his day a failure, later writing that he was unable to overcome “an unaccountable prejudice in favor of ancient customs and habitudes” (Thorp, 1892). It has been argued that proprietary institutions today are the recipients of similar academic prejudice among some contemporary academics (Crotty, 2014; Durden, 2017; McCluskey, 2014).

In subsequent decades, proprietary agricultural schools grew in number and operated across the nation meeting a critical market demand unmet by traditional colleges and universities (Ruch, 2001). This theme of market responsiveness and answering the training needs of employers continued to serve as the basis for numerous proprietary training institutions that would see a surge during the industrial revolution’s emergence in the United States (2001). Bennett et al. (2010) cite an 1873 report from the U.S. Bureau of Education which stated “The rapid growth of the schools and the large number of pupils seeking the special training afforded by them sufficiently attest that they meet a want which is supplied by no other schools in an equal degree” (p. 9). This same level of timely market adaptation has continued to create value for students of proprietary institutions in modern times along with community employers who hire graduates with specific industry skill sets (Durden, 2017). It has been argued that traditional post-secondary academic institutions do not have the luxury due to structural limitations, and in some instances the interest in rapid programmatic adaptation, to cater to volatile market or industry needs due to differing institutional missions (Checkoway, 2016; Marcus, 2017; Scott, 2016; Velcoff & Ferrari, 2006). While the mission of a proprietary

institution may be vocational in nature, a research institution may have a less tangible aim such as preparing graduates as participants in a diverse democracy (Checkoway, 2016). This is not to suggest one approach to education is superior or of higher validity than another, rather it emphasizes diversity in the mission and purpose of contemporary approaches to higher education.

It was during this era of growth and industrialization of the United States that schools began opening multiple campus operations and standardizing curriculum and textbooks resembling modern proprietary institutions of higher learning (Bennett et al., 2010), many of which, including Strayer University remain in operation today. Other for-profit institutions founded during this era remain operational as converted non-profit private institutions.

### ***Early Federal Regulation of Proprietary Education***

For the first two hundred years, proprietary for-profit institutions of higher education operated as a normal part of America's academic fabric meeting the need for market driven workplace demands. It was recognized that traditional colleges and universities served one purpose while proprietary institutions generally served another (Tierney & Hentschke, 2007). Different institutional types attracted different students with different objectives and competitive friction was minimal (Gilpin et al., 2015). Yet, during the World War II era, the previous public indifference toward for-profit institutions of higher education would begin to change.

In 1944, Franklin D. Roosevelt signed into law the GI Bill of Rights which, among other benefits, included funds to support the academic and vocational training of soldiers transitioning from enlisted service into the civilian workforce (United States

Department of Veteran Affairs, n.d.). In the five years following the introduction of the GI Bill funding of higher education, the proprietary school sector expanded at a considerable rate (Whitman, 2017). Some existing literature has argued that the post GI Bill era of for-profit institutional growth was the result of proprietary school owners recognizing the economic opportunity provided by federal funding and established institutions in order to profit from these funds. However, authors examining this phenomenon have ascribed a variety of motives from personal profiteering to altruistic entrepreneurship (Mann, 2018; Shireman, 2017; Whitman, 2017). Yet, a broad literature review suggests that painting the motives of an entire sector with one broad brush stroke is likely to simplify a phenomenon and fall short of any meaningful or comprehensive understanding useful in compiling an accurate narrative. These approaches however are useful in the imposition or implementation of agendas and given the necessary intersection between regulatory and political universes, it is understandable why so much of the literature is simplistic in its argumentative nature. Complex regulatory issues often require a simple or one-sided presentation in order to achieve traction in a political environment. What is evident in this case is that during the post-World War II era, numerous colleges and universities profited from the GI Bill funding from across all sectors. It was after a request from Utah Senator Elbert Thomas, Chairman of the Senate Committee on Labor and Public Welfare to review the efficacy of the GI Bill academic components that concerns were raised over abuses, on the part of colleges and universities. These abuses, defined as using federal funds for educating veterans in areas that would not lead to meaningful employment opportunities, spanned across for-profit, non-profit, and public colleges and universities alike (Whitman, 2017). The report

however demonstrated that the majority of the alleged abuses were found in the for-profit sector (Angulo, 2016). The outcomes in the report might in part be attributed to the fact that the for-profit sector was offering greater number of short-term career and vocational oriented programs and therefore attracted a proportionately higher percentage of GI Bill eligible students looking to quickly transition into a new vocation following their wartime service. Various government investigations however concluded that some institutions failed to equally yoke profit and quality thereby leaving some veterans ill equipped for their desired career transitions (Whitman, 2017; Shireman, 2017).

Congressman Olin Teague would lead the first federal regulatory effort to ensure federal monies in the form of the GI Bill were serving the purpose for which they were intended (Angulo, 2016) and might be considered the father of federal regulation of proprietary institutions of higher education. Teague would also be the first of a long line of politicians to use for-profit schools as a political angle. His efforts changed key dynamics of the GI Bill, establishing the system that stands today where funds for school, books, housing and other living expenses are distributed directly to the student, who then pays the institution (Whitman, 2017).

In subsequent decades recipients of the GI Bill would continue to choose for-profit institutions to further their education. While the majority of these institutions enrolled and graduated veterans and military students without incident, a small handful of schools, including ITT Technical Institute, were repeatedly investigated for advertisements considered misleading, aggressive recruitment tactics, and under-credentialed faculty. These investigations would lead to additional government reform and regulation during the 1970's and 1980's (Shireman, 2017).

On November 8, 1965, H.R. 9567, also known as the Higher Education Act of 1965, was signed into law by President Lyndon Baines Johnson. After nine months of refinement by the House and the Senate, the Higher Education Act served to operationalize the Johnson Administration's articulated vision of providing opportunities for lower and middle-income students to obtain a post-secondary education with less barriers (McCants, 2003). Through the Higher Education Act, the current system of federal grants and loans emerged which largely shaped the modern proprietary education sector.

Of particular relevance, the 1972 reauthorization of the Higher Education Act (1972) specified that students attending any "institution of vocational, professional, or higher education" are eligible to receive federal loans and grants under the Federal Title IV program, regardless of institutional type, provided that standard eligibility conditions are met. The Higher Education Act has always specified that public, private non-profit, and proprietary post-secondary institutions, wishing to participate in the Title IV process must remain in good standing with their institutional accrediting agency and other key accreditors and regulators. Proprietary institutions however, are required to comply with additional federal regulations including meeting ratios considered by the U.S. Department of Education to demonstrate fiscal viability (United States Department of Education, 2020). Iterations of these special regulatory measures have remained at the heart of the regulatory challenges of the modern proprietary school sector (Jump, 2018).

Similar to the expansion of the proprietary post-secondary education sector after the introduction of the GI Bill, access to Title IV funds spurred a rise in the number of proprietary institutions. In less than three decades after the 1972 reauthorization of the

Higher Education Act, over 1 million students had utilized some form of Title IV aid to pay for courses at proprietary post-secondary institutions (Linehan, 2001). Appling (1993) demonstrated that during this era, the use of borrowed or granted Title IV Funds exceeded \$5 billion and nearly 30% of all Title IV awards were utilized for attendance at proprietary institutions (Appling, 1993; Cheng & Levin, 2005). While some might argue that the growth of the proprietary school sector provided opportunity for underserved student populations and therefore assisted in the realization of the Johnson Administration's vision for the Higher Education Act, other literature, as will be demonstrated, argued that public funds profiting the private sector is problematic. In either case, challenges arose as the sector grew larger, including student loan defaults at rates higher than public or private non-profit institutions and allegations of Title IV funding abuses; some founded while others were baseless. Other challenges, not unlike those discovered after the introduction of the GI Bill would also arise. These included the effectiveness of the curricular offerings at some institutions, the credentialing of faculty at some institutions, and accusations of aggressive or misleading recruiting practices at some institutions (Van Dyne, 1973).

The Nixon Administration through Caspar Weinberger, the Secretary of Health, Education and Welfare, issued new regulations that would place sanctions on institutions with a loan default rate in excess of 10%, a withdrawal rate in excess of 20%, or if more than 60% of the total student population used federal loans to cover the cost of their education (Report to the Federal Trade Commission, 1976; Whitman, 2017). Senator Ted Kennedy was among the first elected officials of prominence to defend proprietary institutions citing the role they played in educating minority and low-income students

along with displaced workers seeking to reenter the workforce (2017). Adhering to democratic sentiment at the time, the Carter Administration would later dismantle these regulations during the implementation of the newly created United States Department of Education. The Reagan Administration changed course and developed a new set of regulatory measures targeting proprietary institutions. William Bennett, Secretary of Education under Reagan would take up the mantle and his proposal to sanction institutions with high default rates would in time influence the 1992 Higher Education Amendments signed into law by George H.W. Bush opening up a third distinctive era of higher education regulation (Whitman, 2017). The writings of Wilms, et al (1987) served as a contemporary critique of the administration's attempts to remove proprietary institutions from Title IV programs as a result of student default rates arguing that such a move would run the risk of jeopardizing opportunity for low income and minority students (Wilms et al., 1987).

### ***The Modern Era of Federal Regulation of Proprietary Education***

It has been argued that truly impactful regulation of proprietary education began in this third era when Democratic Congresswoman Maxine Waters introduced the 85/15 Rule in 1992, which along with the Bennett sanctions, was ultimately written into the reauthorization of the Higher Education Act (Phipps et al., 1999) and would be the last truly bi-partisan attempt to regulate the sector. A considerable amount of literature addressing the 85/15 Rule and its subsequent iterations exists and provide insight into beginnings of the present dynamics that constitute Federal Regulation of Private Sector Education.

The bill was introduced during a time when the federal student loan default rates

of private sector college students began to catch the eye of regulators. According to the U.S. Department of Education (2004), the late 1980's and early 1990's produced the highest default rates in history, and students attending private sector institutions were more likely to default on loans than those attending private non-profit or public institutions (Cheng & Levin, 2005). In an effort to curb the default rate, the rule prohibited proprietary colleges or universities from taking in more than 85% of their revenue from federal Title IV funds. During the 1998 reauthorization, adjustments were made allowing for 90% of revenue coming from Title IV funds, and the regulation has since been known as the 90/10 Rule (United States Department of Education, 2020). The rationalization for this long-standing Rule is that institutions comprised of high student populations of zero-estimated family contribution (EFC) applicants, or low-income students, have higher loan default rates (General Accounting Office, 1997). Therefore, it was surmised that limiting the amount of Title IV funds received by private sector institutions would reduce default rates presumably by ensuring fewer low-income students would enroll in these institutions (House Hearing, 109 Congress, 2005). It was further argued that if an institution's educational offerings were competitive that it should not be difficult to attract 15% of enrollees who could pay for tuition costs using funding other than government loans or grants (Swenson et al., 2005).

Proponents of the 90/10 Rule have argued that the regulation helps “combat rampant fraud, misrepresentation, and exploitative practices in the for-profit vocational education industry” (House Hearing, 109 Congress, 2005) and that it is needed to stop and avoid abuses (Miller, 2005). However, as the 90/10 Rule has come up for debate, primarily during reauthorization proceedings of the Higher Education Act, abuse proved

hard to quantify and difficult to contrast with abuses in public and non-profit institutions (The College Access & Opportunity Act, 2004) and therefore difficult to infuse into the political dialogue. What did become clear was that student loan defaults were considerably higher in the proprietary sector and this challenge has remained tangible enough for political debate. Prior to the Rule being enacted, proprietary school students carried 35% of loans entering repayment yet were responsible for nearly 70% of defaults or \$140 million in unpaid debt. The General Accounting Office chimed in on the debates arguing that “when borrowers fail to meet their financial obligations by not repaying their federal student loans, it is the government that ultimately must pay for this failure” (General Accounting Office, 1999, p. 13).

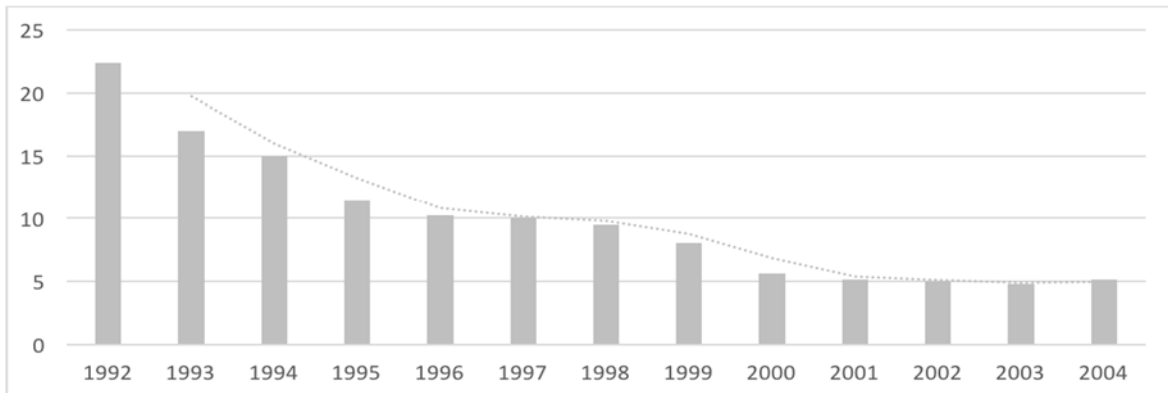
During this era, proponents of the 90/10 Rule argued that the regulation was effective in curbing student loan default. Serving as the senior Democrat on the House Education Committee, Congressman George Miller (2004) defended the 90/10 Rule as a safeguard against student loan default testifying before Congress that due to “ballooning student loan default rates, in 1992 Congress enacted a series of protections and integrity measures to safeguard students and taxpayers” (Miller Hearing, 2005). In a similar hearing, Alice Letteny, Executive Director of the University of New Mexico argued that, “the package of integrity provisions put in place by the 1992 HEA reauthorization, including the 90/10 Rule, resulted in an immediate, precipitous, and sustained drop in the student loan default rate” (House Hearing, 108 Congress 2004).

Yet, data produced independently during the era does not corroborate these claims. A study commissioned by Congress prior to the hearings and produced by the United States General Accounting Office, suggested that the 90/10 Rule had not improved default rates

and even by increasing the ratio to an extreme 45/55 Rule would only impact default rates by 3% (General Accounting Office, 1997). The study also concluded that if such a dramatic ratio shift were to take place it would likely “cause schools to make changes, such as admitting fewer low-income students” and “might compromise student access to postsecondary education” (General Accounting Office, 1997, p. 3). Further confusing the debate during this era were the student loan default rates published in 2006 by the United States Department of Education; the publication being a requirement of the Higher Education Act. The data indicated that student loan default rates did significantly drop between 1992 (the year the 85/15 Rule was enacted) and 2004. Figure 1 below is a recreation of the data and demonstrates a drop from 22.4% in 1992 to 5.1% in 2004.

**Figure 1**

*Student Loan Cohort Default Rates.*



Adapted from U.S. Department of Education Federal Student Aid Office (2006).

While this report served as a source for claims made by Letteny (2004) and others during congressional hearings to draw conclusions of the effectiveness of the 90/10 Rule, it should be noted that the data includes all institutions, across all sectors. Given that the 90/10 Rule did not apply to public and nonprofit institutions who made up the vast majority of students entering repayment, an alternative phenomenon would likely account

for the dramatic drop in default rates.

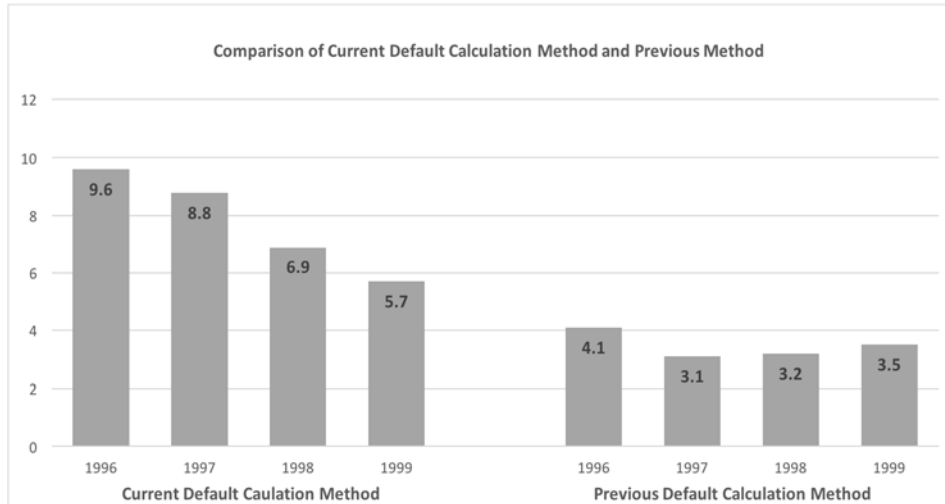
An audit conducted by the Office of the Inspector General for the United States Department of Education was commissioned in December 2003 to determine if “default rates, as calculated under the Higher Education Act of 1965, as amended, provide sufficient information on defaults in the Title IV loan programs” (Office of the Inspector General [OIG], 2003). It was determined that while “cohort default rates provide the information required under the HEA” they ultimately “do not appear to provide decision-makers with sufficient information on defaults in the Title IV loan programs” (OIG, 2003). The audit pointed out that an amendment to the Higher Education Act in 1992, the same year as the 85/15 implementation, dramatically changed the way default rates were calculated. The audit concluded that the default rates were “materially lower than they would have been, if they had been calculated using the previous definition of default” and that “public, private, and proprietary school types all experienced trends in their cohort default rates and adjusted default rates similar to those we describe for the overall default rates” (OIG, 2003, p. 11). Slight variations exist between the U.S. Department of Education’s default data and that of the Inspector General’s Office audit. This is acknowledged within the audit where the Inspector General’s Office states:

For consistency, all default rates contained in this report have been rounded to one decimal place. In preparing cohort default rates, the Department truncates the cohort default rate at one decimal place. As a result, for some years and/or school type cohort default rates, minor differences may be noted between the cohort default rates contained in this report and those issued by the Department (OIG, 2003, p. 12).

Figure 2 provides an illustration of this data:

**Figure 2**

Comparison of Current Default Calculation Method and Previous Method.



Reproduced from the Office of the Inspector General (2003).

Another key element in the reduction of student loan defaults across all sectors during this period was the relaxed forbearance and deferment requirements enacted in the 1992 reauthorization of the Higher Education Act. This change was made with the intent to reduce loan defaults counting students in deferment or forbearance status as current on their loans (General Accounting Office, 1999).

This apparent confusion and potential impact on public policy prompted the United States General Accounting Office to publish a 1999 report entitled “Default Rates need to be Computed More Appropriately.” A recommendation was made to the Department of Education to place students in forbearance or deferment status into a separate category than students in good repayment standing. The report noted that after the 1992 amendments to the Higher Education Act, “the percentage of borrowers with loans in deferment or forbearance more than doubled, from 5.2 percent of borrowers who had begun repaying to 11.3 percent” (General Accounting Office, 1999, p. 9). Relevant

to the 90/10 regulation, the General Accounting Office also noted that “This doubling was consistent across the various types of schools, including 4-year and less-than-4-year public and private schools as well as proprietary schools” (General Accounting Office, 1999). And that by “calculating default rates using an alternative methodology that excluded borrowers with loans in deferment or forbearance resulted in higher default rates” (General Accounting Office, 1999, p. 9). With this alternative method, the default rate only increased by 1.2 percentage points to 10.9 percent and proportionally similar across the different types of schools (General Accounting Office, 1999).

The GAO reported that the Department of Education resisted recommendations to changing their methodology stating that:

Department officials told us they did not favor changing the current method for calculating schools’ default rates because the national default rate has fallen each year since 1991, and, at the same time, more than 1,000 schools have been removed from the programs because their default rates were too high (General Accounting Office, 1999, p. 11).

The report expressed concern over the reasons given by the Department of Education to continue administering under the current calculation methods, stating:

We do not believe that the Department’s objections to changing the method of calculating the cohort default rate are compelling. The reasons cited are mainly administrative in nature and appear to be overstated. For example, those schools that would likely have a compelling reason to challenge or appeal on this basis are the ones that would move above the default rate threshold specifically because students in deferment or forbearance were excluded from the calculation (General

Accounting Office, 1999, p. 11).

After a critique of the department's methods the GAO concluded that "the potential savings to the Department in reduced default claims could well exceed the costs of administering the change in the default rate calculation" (General Accounting Office, 1999, p. 11).

Despite numerous suggestions throughout the existing 90/10 literature that the measure reduces student loan default among proprietary school students, the available information suggests that the data from the Department of Education used by much of the existing literature as a primary citation may have been misinterpreted and no reliable data has been produced demonstrating that the regulation has been effective in reducing default rates. There may be other merits to the regulation as indicated by Letteney (2004) who argued before Congress that the rule is effective but "the abuses that have been prevented by it cannot by definition be documented" (The College Access & Opportunity Act, 2004). However, with the data suggesting that the 90/10 Rule has likely not made a significant difference in the improvement of cohort default rates and that even stricter variations of the ratio are not likely to help, and no way to document the abuses prevented that Letteney (2004) refers to, the literature arguing for the necessity of the regulation is called into question. It may therefore be prudent for policy makers to consider alternative approaches to reducing federal loan default rates as future opportunities for the Higher Education Act and evaluate the usefulness of the 90/10 Rule in relation to its stated purpose of curbing student loan default.

At the writing of this work, the 90/10 Rule is still in effect and contemporary literature appears to offer no new insights into the equity or efficacy of the regulation.

Rather the same arguments are put forward that were used during the formative years of the Rule. Congresswoman Maxine Waters remains an outspoken proponent of the 90/10 Rule and continues to argue vigorously that the rule she co-authored should not only remain in effect but that the ratio should return back to the original 85/15 (Enforcement of Federal Anti-Fraud Laws in For-Profit Education, 2005). Waters continues to raise the concern that proprietary institutions are exploiting minorities and has worked to persuade new generations of lawmakers that the 90/10 Rule serves as a defense against predatory schools (2005). Field (2011) argued that if a college has a program that is worthwhile, enough students will pay out of their own pocket to help fund an institution's 10% non-federal portion of top-line revenue. In contrast Kantrowitz (2013) pointed out that low income, minority, single parent female, working adults, and first-generation college student groups prefer private sector institutions. These groups also comprise a significant portion of the sector's enrollment (Kantrowitz, 2013). Kantrowitz (2013) has in pointed out that because for-profit institutions are servicing demographic populations with the highest likelihood of loan default rates at proportionately higher levels than public or private non-profit institutions, that many inaccurately identify default propensity with institutional type rather than student demographics.

As noted earlier, one additional consequence of the 90/10 Rule is that many proprietary institutions choose to increase tuition at least ten percent above the student annual maximum allowable from Title IV funds. While this ensures institutions remain compliant, it requires students to find alternative methods to pay for at least ten percent of their tuition expenses. This creates a dilemma for institutions with large percentages of low-income students who may find it difficult to obtain other forms of funding. While it

may support the goal that Waters set out to accomplish by reducing the number of minority students attending proprietary institutions (Enforcement of Federal Anti-Fraud Laws in For-Profit Education, 2005), many of these students will simply choose not to pursue a college education (Fain, 2014; Guryan & Thompson, 2010; Iloh, 2016).

Farrel (2003) also acknowledged the significant amount of minority enrollments in private sector colleges and universities suggesting along with Kantrowitz (2013), that the 90/10 Rule reduces opportunities for non-traditional student groups who have generally not been served by traditional institutions. Despite Field's (2011) suggestion, these groups may be unable to pay any out of pocket expenses and therefore will choose not to enroll in higher education altogether if required by regulation to pay for ten percent or more of their tuition out of pocket (College Access & Opportunity Act, 2004). As stated previously, a common argument in support of the 90/10 Rule is that if an institution's educational offerings were competitive that it should not be difficult to attract 10% of enrollees who could pay for tuition costs using funding other than government loans or grants (Swenson et al., 2005). Guida and Figuli (2012) argued that this assumption is flawed stating "the 90/10 rule is fundamentally in conflict with the goal of educating low-income students. The rule presupposes financial resources that are not available to low-income students" (p. 148). They also point out that for many institutions the only way to comply with the 90/10 Rule is to increase tuition to at least 10% above the maximum allowable Title IV limits. They argued "because proprietary institutions have no authority to limit student use of Title IV federal student aid, their main tool for 90/10 compliance is increasing institutional charges beyond the maximum amount of

federal aid to force students to fill the "gap" thus created with non- Title IV funds" (Guida and Figuli, 2012, p. 150).

State level regulations in New York, New Jersey, and California were also introduced in 2018 and 2019 advocating for a stricter 80/20 Rule. The Century Foundation, a thinktank employing former Duncan era officials from the Department of Education including Robert Shireman, are lobbying state by state to create legislation that would make operating a proprietary institution difficult (Marcus, 2018). If the Rule is addressed through future Higher Education Act amendments, the virtually unchanging literature and data surrounding the regulation's twenty six years of impact might prove useful as new officials seek to understand a decades old challenge of how to curb student loan default rates without creating barriers for low income and minority students to obtain a post-secondary education.

### ***A Description of the Duncan Era***

The fourth and most significant era of heightened regulation of proprietary education began in 2009 when the United States Department of Education, under Secretary Arne Duncan utilized the Health Care and Education Reconciliation Act to introduce the Federal Direct Loan Program (FDLP). This act paved the way for multiple regulations introduced under Duncan, and as indicated elsewhere, this particular era is the focus of the study at hand.

In April of 2009 Secretary Duncan appointed Robert Shireman, an advocate for low-income student access to higher education and critic of lending institutions such as Sallie Mae (Lederman, 2009) as deputy undersecretary. Shireman was also an outspoken critic of proprietary education having previously worked for the Institute for College

Access of Success referred to by Davis (2010) as an anti-for-profit college lobbying group. It is interesting to note that a drop between 5% and 10% in the stocks of publicly traded higher education companies immediately followed the announcement of Shireman's appointment (2009).

With the help of Undersecretary Shireman, Secretary Duncan implemented a three-pronged approach that dramatically overhauled the Title IV program with the aim of reducing student loan debt and containing the expense of a college education (Lederman, 2015).

The first aim was implementing the Income-Based Repayment (IRB) plan accounting for disparities in borrower's income after graduation or upon leaving college and giving additional benefits up to forgiveness for graduates who have worked in certain public or non-profit settings (United States Department of Education, 2009). Duncan cited this as one of his key achievements (Horowitz, 2015). The second aim was to increase federal funding for Pell Grants. The measure resulted in an increase in six million federal Pell Grants to approximately nine million federal Pell Grants (2015). The third component of transforming higher education or the third "leg in the stool" as Secretary Duncan referred to it (Horowitz, 2015) was the Federal Direct Loan Program (FDLP).

Prior to 2009, federal student loans within the scope of Title IV funding were originated and owned by private lending institutions and backed by guarantee agency and reinsured by the United States Department of Education in the event a borrower defaulted on their repayment (Simkovic, 2013). The FDLP eliminated all private lenders from the program blocking billions of dollars in profits. Duncan argued that the previous system

was inefficient and the FDLP would save the department \$24 billion over 5 years (Lederman, 2009). The United States Department of Education, under the FDLP would become the sole lender of all federal student loans directly obtaining capital from the U.S. Treasury (2009).

In addition to eliminating private sector lenders, the FDLP opened the way for new controls in higher education. “Where there is money there is control” stated David Whalen, provost of Hillsdale College in reference to institutional participation in Title IV programs (Caputo & Marcus, 2016). As stated previously, federal funds are generally distributed with the understanding that some level of accountability regarding use accompanies the receipt, generally taking the form of regulatory controls (Lawson, 2013; Pew Charitable Trust, 2015). Caputo and Marcus (2016) pointed out that for this reason many institutions affiliated with religious institutions choose not to participate in Title IV programs. This gives the institutions a certain freedom from regulatory controls, however students are unable to obtain federal loans or grants, and the tradeoff may be a lower enrollment.

The post FDLP regulatory controls enacted by Secretary Duncan which ranged from prohibiting admissions recruiters from being bonused on enrollments to sanctions for misrepresentation to ensuring only eligible students receive federal funds went largely unchallenged. However, some controls of the post FDLP or Duncan Era caused considerable controversy, three of which would become significantly impactful to the proprietary education sector. These are:

1. The Gainful Employment Rule
2. State Authorization

### 3. The Borrower Defense to Repayment Act

It has been argued that the advent of these particular regulations during the Duncan Era contributed, at least in part, to hundreds of program closures along with hundreds of college and university campuses closing their doors and negatively impacting thousands of students (Kieler, 2016; Puzzanghera & White, 2016). A brief overview of these three regulatory controls will be presented followed by an examination of the literature on the Duncan Era regulatory controls.

#### *The Gainful Employment Rule*

In 2009, the Department of Education sought to strengthen its regulatory oversight of the proprietary education sector by clarifying previously undefined language in the Higher Education Act. According to these provisions, in order for higher education institutions to participate in Title IV funding, the educational programs offered must lead to a degree in the case of traditional private non-profit or public institutions or in the case of proprietary schools, must prepare graduates for “gainful employment” in a recognized occupation (Gainful Employment, N.D.). Prior to 2009, no effort had been made to clarify precisely what the term “gainful employment” meant. It was the absence of this definition that allowed the department to formulate what would become the Gainful Employment Rule.

Subpart Q would be added to the Student Assistance General Provision of the Higher Education Act defining “gainful employment” based on “the typical loan debt and earnings of a cohort of the program’s former students who completed the program” (p. 1). The debt to earnings rates were defined in two ways; the Annual Earnings Rate and the

Discretionary Income Rate. According to the Department of Education (2016), the Annual Earnings Rate is determined as follows:

- An estimated annual loan payment based on the median student loan debt incurred by students within a graduating cohort amount serves as the numerator. The higher between the mean or median earnings provided by the Social Security Administration serve as the denominator.

The Discretionary Income Rate was defined in the regulations by using the following formula:

- The same numerator as the Annual Earnings rate is divided by the higher of the mean or median earnings less 150% of the current poverty threshold.

The department chose 20% or 8% as the passing thresholds for the Annual Earnings Rate and the Discretionary Income Rate respectively. Programs unable to maintain one of these thresholds over four consecutive years would become ineligible to participate in the Title IV program. Justification for the aforementioned 8% threshold was based on research published by Baum and Schwartz (2006) as a mortgage eligibility standard. Yet within the research Baum and Schwartz (2006) specify that the 8% threshold “has no particular merit or justification” outside the realm of mortgage eligibility including student loan debt ratios (Department of Education, 2018). This provision along with others contained within the regulatory language lead to challenges in Federal Court as Judge Randolph Contreras ruled that the language of the rule was “arbitrary and capricious” (Breslow, 2012).

Among the problems encountered, particularly for smaller vocational colleges, were regulations that left little room for maneuvering. For example, the Gainful

Employment Rule implemented during the Duncan Regulatory Era required student debt loads to be commensurate with their earnings after graduation, in theory driving tuition costs lower. However, the long standing 90/10 Rule requiring that no more than 90 percent of institutional revenue come from federal sources has traditionally been solved by institutions keeping tuition costs higher than the maximum annual allowance for federal student loans. In other words, one regulation required many institutions to lower tuition, while placing them in jeopardy of another regulation, which many institutions had historically satisfied by keeping tuition rates high. Running this gauntlet proved difficult for many higher education administrators in proprietary education, particularly those servicing low-income students who relied on federal funding to cover the entire cost of their schooling (Kantrowitz, 2013).

Exacerbating the challenges of the Gainful Employment Rule and its impact on institutional adherence to the 90/10 Rule, is the fact that institutions have no discretion under current Title IV Regulations to limit the amount of aid a student is eligible to receive after all costs of attendance are covered. In other words, if a student is eligible for \$25,000 in annual federal aid, and the total cost of attendance is only \$10,000, the student is entitled to the remaining \$15,000. The risk is the shortsighted temptation to pocket the excess money without regard to the eventual build of one's personal debt load. Several thousand dollars into one's wallet today may understandably cause one to disregard the distant future impact incurring such debt may have. Not surprisingly, therefore, with a graduate's eventual debt load, as well as the student's personal inability to repay their loans factoring into the institution's regulatory accountabilities, the fairness of holding institutions accountable for default rates and graduate debt loads via financial

penalty or revocation of authorization to participate in the Title IV program is a practice that has been called into question for decades (Wilms et al., 1987; Woo, J.H., 2002).

Furthermore, the prohibition on withholding excess funds from students does little to curb student loan debt and theoretically aggravated the Gainful Employment Rule's effort to reduce tuition costs.

With the 90/10 Rule still in effect, the combined dichotomy of one regulation that forces tuition prices higher (the 90/10 Rule) and another that requires lower tuition prices (Gainful Employment Rule) an interesting challenge exists for leaders of certain proprietary education programs. During the Duncan Regulatory Era, we saw the largest amount of school closures in the nation's history (Kamenetz, 2015). Some media reports during this era sensationalized and attributed these closures to the difficult regulatory landscape, some applauding the effort (Grasgreen, 2015; Kamenetz, 2015) while others lamented the circumstances and the impact on student opportunity (Speiser, 2015). However, it is difficult to fully credit the 90/10 and Gainful Employment gauntlet to the massive programmatic and institutional closures. Other factors including the unprecedented expansion, growth and opening of new private sector institutions during the Bush Administration (United States Senate, 2011), many of whom would later shrink in size, and the subsequent expansion of public and nonprofit institutions into the arena of adult learning. These factors have also played an impactful role in the proprietary school market and should be taken into consideration when examining the phenomenon of widespread institutional closure.

*State Authorization*

The Department of Education estimated that during the Duncan Era approximately 5.5 million students were taking online courses at degree-granting institutions; approximately 3 million were exclusively online students (United States Department of Education, 2016). Furthermore, it was estimated that nearly half of all proprietary education students were enrolled in fully online programs (2016). This phenomenon raised questions on oversight across state lines and international borders. As a hypothetical example, if an institution located in Salt Lake City, Utah enrolled and actively served online students in Boston Massachusetts, to which oversight body would the institution be accountable to in relation to student outcomes or other oversight matters such as student grievances? What oversight exists for students living abroad taking courses from the Salt Lake City based institution including active military personnel and their families? From a regulatory standpoint, the disruption of online education raised numerous questions.

To address the numerous unanswered questions the Department of Education under the supervision of Secretary Duncan introduced the State Authorization Regulation. This rule required campuses with online course offerings to obtain approval and demonstrate compliance with each state regulatory agency in which online students reside. In other words, the institution in Salt Lake City offering online courses to a student in Boston must obtain approval from the State of Massachusetts. This proved challenging not only for institutions operating across multiple states but also for state agencies as well. Some states such as Utah deferred to the institutions accrediting agency while states such as California had multiple regulatory bodies with some level of higher

education oversight. The complexity of the State Authorization regulations has been deemed by opponents as “unnecessary” and “overly burdensome to higher ed” with an adverse impact on online learning during an era “where demand is greater than ever” (State Authorization, n.d. p. 1).

Regardless of one’s position on State Authorization, the complexity of holding institutions accountable across state and international borders will remain a relevant concern. While online enrollment has declined overall in the proprietary education sector, largely due to institutional closures and the shrinking of the sector, online education on the whole continues to grow (Friedman, 2018). According to Friedman (2018) the total number of strictly on-ground students dropped by more than one million as students are making a shift to partial or full online programs.

### ***Borrower Defense to Repayment Act***

The collapse of the very large ITT Technical Institute, Corinthian Colleges, and numerous other proprietary institutions brought upon by multiple lawsuits and regulatory investigations put thousands of students in a difficult position. The anticipation of this challenge led to the Obama Administration’s strengthening of the Borrower Defense to Repayment Act. This regulation, added to the Higher Education Act in 1994 via the rulemaking process, allows students to petition for loan repayment relief in the event they were defrauded by their school. However, due to the influx of institutional closures under Secretary Duncan, the U.S. Department of Education saw an influx of discharge requests referred to by McCann (2017) as an opening of the floodgates. Similar to the Gainful Employment Rule, the department introduced language intended to better outline defrauded student rights arguing that the previous iteration was vague in its standards

(McCann, 2017). Summarizing the 164 pages of the rule, McCann (2017) pointed out that the department categorized the circumstances in which students could seek relief into three main areas:

1. Substantial misrepresentation on the part of the institutions, including misleading statements that the student borrower can demonstrate caused injury including falsified career placement statistics.
2. Breach of contract including any obligations deemed contractual between the institution and student such as tutoring services or career placement promises.
3. Any favorable judgment in which a state or federal judge renders in favor of the student petition (McCann, 2017).

During the negotiated rulemaking process, a period for public comment is generally granted. Within this time frame, several advocate groups stepped forward arguing the disparity between state standards for relief creates an inequity suggesting a federal standard serve as a baseline thereby elevating states less favorable to debt relief while allowing students from states with more liberal relief allowances to retain those benefits. McCann (2017) argued that this approach does little to improve upon the circumstances of the prior iteration of the regulation as it requires the federal government to interpret state law on behalf of students and schools.

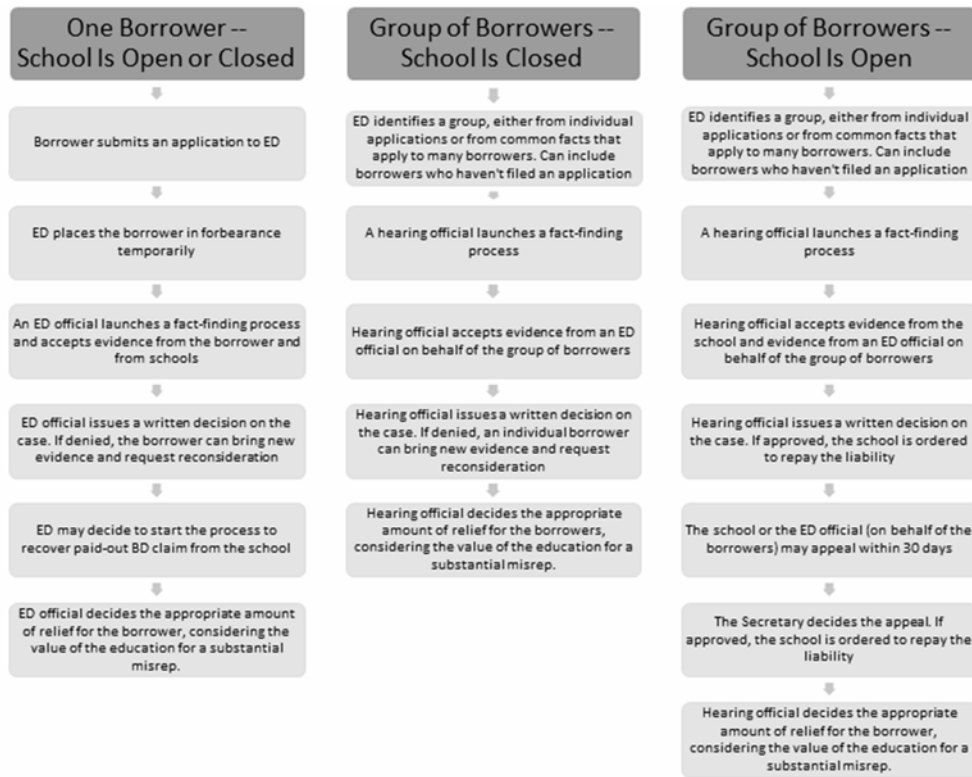
Because this particular regulation is not targeted solely to proprietary schools, other non-profit institutions, particularly Historically Black Colleges and Universities (HBCU's), joined the proprietary sector lobby in pushing to add "intent" to the Borrower Defense to Repayment Rule (McCann, 2017). The HBCU lobby argued that without the burden of demonstrating intent, students may be empowered to file erroneous claims,

either knowingly or unknowingly. In part this concern was driven by the new elements introduced by the department, where institutions are now required to share in the financial burden of repayment. For example, an institution deemed in violation is required to post a letter of credit with the U.S. Department of Education in the amount of 10 percent of annual revenue derived from federal funding if the financial penalty reduces the institutional composite score. The U.S. Department of Education requires any private college or university (proprietary or non-profit) to maintain a level of fiscal health deemed to project viability. The composite score assigns a rating to the school between 1 and 3, with a 1 being deemed not financially responsible. If the liabilities associated with the Borrower Defense of Repayment Rule are substantial enough to place an institutions composite score at a 1, they are required to post a 10 percent letter of credit. For many small proprietary institutions or nonprofits lacking large endowments, the financial burden of the rule has the potential to impact the institutions survival (McCann, 2017).

The following process chart provided by McCann (2017) demonstrates the Borrower Defense to Repayment triggers and subsequent process flow under the various scenarios that may arise from students applying for loan relief:

**Table 1**

Borrower Defense to Repayment Outline.



McCann, C. (2017). The Ins and Outs of the Borrower Defense Rule. New America.  
<https://www.newamerica.org/education-policy/edcentral/ins-and-outs-borrower-defense-rule/>

The timing established in the Higher Education Act placed the burden of the Borrower Defense to Repayment forward several years thereby requiring the next administration to administer the inherited regulatory outcomes (Douglas-Gabriel, 2020). At the time of the writing of this study, Secretary DeVos has opened a new negotiated rulemaking process designed to address the Borrower Defense to Repayment Rule, the Gainful Employment Rule and other regulatory measures enacted during the Duncan Regulatory Era. While some argue that the Trump administration via DeVos will completely dismantle the Duncan Regulatory Era (McCann, 2017, Abdul-Alim, 2017)

other literature appears to project that minor modifications will be made and that the regulations will most likely stand, albeit with different controls and institutional penalties (Douglas-Gabriel, 2020).

### **Equitable Administration of Regulations**

It has been argued that proprietary institutions must be regulated differently than non-profit or public institutions primarily due to the fact that they have private ownership (Lederman, 2014). Private ownership may take the form of a single proprietor, a group of investors, or even shareholders who own a stock in a publicly traded institution.

Shireman (2014) argued that because private ownership may receive financial gain if the institution increases profits that the federal government should hold them to separate and distinct regulations. While leaders of public and private non-profit institutions may receive additional compensation, including bonuses, for financial performance, they are limited by a rule known as non-distribution constraint which prevents ownership or unduly benefit from the organization's monetary successes (Lederman, 2014).

Proponents of proprietary education regulation make the argument that the incentive for profit may lead to exploitation and that proceeds should be directed to needs that are more socially optimal than benefiting ownership (Shireman, 2014).

While iterations of the aforementioned argument for unique regulation of the proprietary education sector are abundant in the literature, there does not appear to be a clear correlation between the Duncan Era regulations and the reasons provided in support of their implementation. The literature does demonstrate that these regulations have the potential to limit both growth and access to proprietary education programs and even potentially closing certain programs (McCann, 2017), yet a precise description of how the

Duncan Era regulations prevent ownership from keeping profits or providing guidance on what should be done with earnings that may be more socially optimal is absent. This is among the reasons why a federal judge ruled that the regulations were “arbitrary and capricious” (Federal Register, 2014 p. 1). It is also among the reasons that proprietary education leaders have asserted that the regulations were designed simply to harm the sector rather than elevate it to higher standards of accountability (Bidwell, 2014).

A number of proponents of the sector have argued that if the regulations were equitably applied to all sectors of higher education that many institutions, including Harvard’s dental program would fail to meet the regulatory standards (Murakami, 2020). The same can be said for prominent programs such as a law degree from George Washington University or a bachelor’s in social work from the University of Texas. If the regulations were applied across the board many programs would fail (Bidwell, 2014). It is estimated that approximately 18 percent of all private non-profit programs and slightly more than seven percent of public programs would fail the Duncan regulatory standards. Nearly a quarter of all private non-profit and public programs would be placed in probationary status if the regulations applied equitably across sectors (Murakami, 2020). Referring to this data Murakami (2020) stated:

This indicates that a lot of the people asserting that for-profits are uniquely bad actors are wrong -- as a group, their performance is quite similar to that of nonprofits. Publics do noticeably better than either nonprofit private or for-profit

colleges, no doubt because they generally cost less to attend and therefore their graduates have less debt.

In the same article Murakami (2020) quotes Steve Gunderson, president and CEO of Career Education Colleges and Universities who stated “there are problematic programs in all sectors” (p.1). Elsewhere Gunderson has asserted that “The gainful employment regulation is nothing more than a bad-faith attempt to cut off access to education for millions of students who have been historically underserved by higher education...Regulations created and issued based on bias against certain institutions have no place in our country” (Bidwell, 2014).

Many of the study participants, as demonstrated in chapter four of this study, call for regulatory equity. However, interest in adopting such measures has according to the literature not garnered substantive support (Murakami, 2020). For example, Murakami (2020) quotes Lynn Pasquerella, president of the Association of American Colleges and Universities who opposes the idea of equitable regulation across all sectors. She stated that burdening public institutions “would further exacerbate the false narrative that the value of college relates only to employment” (Murakami, 2020). The DeVos administration, who has been more accepting of proprietary education institutions, and has argued for equitable transparency across sectors, has kept a basic structure of unique regulations for the proprietary education sector (Whitman & Duncan, 2018). This suggests that the department is not likely to entertain advocates wishing to see regulation apply equally across all sectors of higher education.

### **The Impact and Efficacy of the Duncan Era Regulations**

Critics of the current regulatory environment argued that the sector is painted with a broad brush and the abuses of the “few” are burdening a compliant “many” (Miller, 2005). Some of the literature raises concern that burdensome regulation may lead to continued campus closures. With fewer proprietary institutions available to students, it is argued that higher education opportunities will diminish for some of America’s most disadvantaged students including low-income and minority students (Alford, 2014; Association of Career Colleges & Universities, 2014; Fain, 2014; Guryan & Thompson, 2010). This section will also briefly address institutions seeking to migrate to non-profit status in part to avoid regulatory controls.

#### ***Specific Impact on Low-Income and Minority Students***

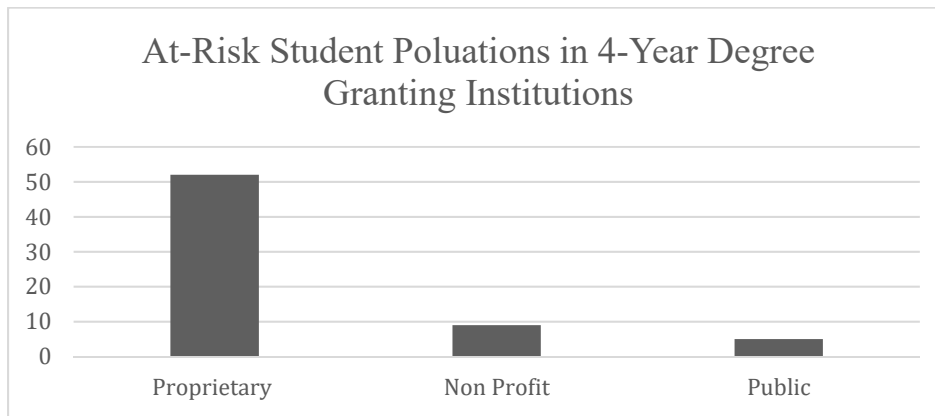
As one considers the impact of the Duncan Era regulations, their effect on low-income and minority students is one noteworthy theme contained in the existing literature. This concern was raised early in the history of proprietary education with notable politicians such as Ted Kennedy expressing concern that overregulation of proprietary schools may limit opportunities for low-income and minority students (Whitman, 2017). This debate remains central to the regulatory arguments of the Duncan Era. Alford (2014) for example, argued that private sector institutions are among the few avenues for African American students to enter the business world and start productive careers. McCluskey (2014) argued that minority students attending proprietary institutions graduate at higher rates than minority students attending traditional colleges and universities. For example, African American students meet the six-year graduation rate at 21 percent as opposed to 18 percent at open admissions public colleges and

universities (2014). The differences are even more pronounced when looking at two-year institutions, who are held to program completion under 150 percent of the required program completion time. African American's attending proprietary institutions graduate within this time frame at 53 percent compared to 11 percent at public institutions (2014). According to Alford (2014), the Gainful Employment Rule significantly reduces higher education opportunities for African Americans and other minorities as well as presents challenges for businesses who rely heavily upon graduates from proprietary institutions. Other literature aligns with Alford and suggests that as private sector schools become over-regulated, their doors will begin to close thereby reducing academic opportunities for traditionally underserved student populations and particularly minority students (Association of Career Colleges & Universities, 2014).

Data suggests that proprietary schools service higher numbers of students who are likely to default than other institutions (Miller, 2005; Kantrowitz, 2013; Guida Jr. & Figuli, 2012). Farrell (2003) and Appling (1993) pointed out early on in the regulatory development of the sector that low-income students are more likely to attend proprietary institutions and in fact come from households earning approximately \$8,000 less than low-income students attending public community colleges (Farrell, 2003; Appling, 1993, p. 3). Guida Jr. and Figuli (2012) cite data from Swail (2012) showing a significant disparity between students identified to be at risk for completion and loan default rates attending proprietary schools as opposed to traditional institutions as displayed in Figure 3 as follows.

**Figure 3**

Student Populations in 4-Year Degree Granting Institutions.



Reproduced from Guida, A.J. & Figuli, D. (2012). Higher Education's Gainful Employment and 90/10 Rules: Unintended "Scarlet Letters" for Minority, Low-Income, and Other At-Risk Students.

Sector proponents therefore argued that federal regulations introduced barriers for low income and minority students in their pursuit of higher education options (Appling, 1993; House Committee Hearings H.R. 4283, 2004). Proponents of regulating the sector on the other hand argue that the measures served as a protection to low income and minority students by placing restrictions on proprietary uses of Title IV Funds (The College Access & Opportunity Act, 2004, Swenson et al., 2005; Enforcement of Federal Anti-Fraud Laws in For-Profit Education, 2005). This divide continues as a major theme in contemporary literature on the regulation of the proprietary education sector with no apparent proposals to seek alternative solutions to the stated problems that might serve to replace the sector regulations.

Furthermore, research has indicated that students attending private sector institutions are not likely to transfer to similar programs at private non-profit or public institutions should they be displaced due to college closure. It was estimated that approximately 33 to 44 percent of proprietary education students would be displaced with

no academic alternative if the regulations were to take full effect (Fain, 2014; Guryan & Thompson, 2010). Kreighbaum (2019) added credence to this prediction demonstrating that five years later a very low percentage of students whose institutions have closed actually transferred to another school. For example, only one percent of students enrolled in Argosy University and other defunct Dream Center institutions transferred elsewhere (Kreighbaum, 2019). Additionally, only 5.6 percent of students from Education Corporation of America who at their peak had 31 campuses, have transferred to another institution since their closing in 2018, and 3.1 percent of students from Vatterot's sixteen campus system have continued their education at another institution (2019). This is in part due to the preferences of the demographics who make up private sector education students (Fain, 2014). It is also due to the limited vocational programmatic offerings at traditional colleges. Estimates indicated only 12 percent of students enrolled in proprietary vocational programs, and only 18 percent pursuing associate degrees, have alternatives within their localities (Guryan & Thompson, 2010). While traditional higher education students may be willing to relocate for their education, the primary demographic of those attending proprietary colleges are among the most disadvantaged students, including low-income working adults with one or more children thereby limiting their mobility (Iloh, 2016).

This presents a challenge for leaders in proprietary post-secondary education as they work to steer their institutions through the narrow regulatory gauntlet while working with high percentages of at-risk students. As the higher education landscape during this era is examined, there were proprietary institutions who remained in strict regulatory compliance and those who struggled to operate within the confines of the new

regulations. Understanding the perception of institutional leaders within the sector provides a thread in the tapestry framing the legacy of the Duncan era regulations and its impact on stakeholders including students, administrators, investors, accreditors, and community employers.

As with the 90/10 Rule and other regulations, the Department of Education, through the Duncan Era Regulations attempted to enact a solution for student loan default rates. However, concerns to the approach exist given that they ascribe fault to proprietary institutions for default rates rather than to student borrowers. Data suggests that proprietary schools service higher numbers of students who are likely to default than other institutions (Miller, 2005). Farrell (2003) and Appling (1993) pointed out early on in the regulatory development of the sector that low-income students are more likely to attend proprietary institutions and in fact came from households earning approximately \$8,000 less than low-income students attending public community colleges (Farrell, 2003; Appling, 1993). Sector proponents therefore argued that federal regulations introduced barriers for low income and minority students in their pursuit of higher education options (Appling, 1993; Guida & Figuli, 2012). Proponents of regulating the sector on the other hand argue that the measures served as a protection to low income and minority students by placing restrictions on proprietary uses of Title IV Funds (The College Access & Opportunity Act, 2004, Swenson et al., 2005; House Hearing, 109 Congress, 2005). This divide continues as a major theme in contemporary literature on the regulation of the proprietary education sector with no apparent proposals to seek alternative solutions to the stated problems that might serve to replace the sector regulations.

Proprietary institution enrollment on a whole is comprised of 40% minority students as opposed to 25% in public community colleges which in part exist as an economic advantage for low-income students to achieve various academic goals. This disparity is particularly interesting from a public policy standpoint making this segment of the existing literature valuable in the overall examination of proprietary school regulation. Letteney (2004) during congressional hearings suggested that this disparity can be attributed to minority students being among the least informed student populations regarding higher education opportunities and options (The College Access & Opportunity Act, 2004). In contrast, the California Center for Population Research of the University of California at Los Angeles (2005) argued that minority and low-income students choose proprietary institutions over community college due to programmatic offerings leading to employment, particularly in areas where community colleges are serving as feeder institutions to four-year colleges and universities, suggesting conscious choice as a motivation as opposed to ignorance (Celini, 2005, p. 10-11). Likewise, Farrell (2003) and Karmel (2004), cited the writing of David L. Kirp, professor of public policy at the University of California Berkeley, who argued that proprietary colleges provide advantages to low income and minority families who often prefer academic experiences leading to immediate career advancement and higher income as opposed to spending several years “in the world of ideas” (Farrell, 2003). Thomas G. Mortenson, senior scholar at the Pell Institute for the Study of Opportunity in Higher Education argued that the typical college experience of dorm life or enjoying a semester abroad is not a luxury that many minority and low income students have an interest in. Rather, they are seeking the fastest path to earning better income as opposed to enjoying an academic experience

with the faith that a career will fall into place someday (Mortenson, 2000).

St. John et al. (1995) determined that not only are minority students more likely to choose proprietary schools, African American and Hispanic students attending proprietary schools persist at higher rates than African American and Hispanic students attending college in other postsecondary environments (St. John et al., 1995). Along with Wilms et al. (1987), they were among the earliest producers of literature arguing that the elimination of proprietary schools may reduce academic opportunities for vulnerable student populations and families with limited financial resources (St. John et al., 1995; Wilms et al., 1987).

St. John, Starkey, Paulsen and Mbadaugha (1995) acknowledged that despite the benefit proprietary schools appear to be providing low income and minority students, they did indeed account for a majority of student loan defaults and noted the dilemma of penalizing institutions with high percentage of at-risk students when solving for an important policy challenge (St. John et al. 1995). St. John, Starkey, Paulsen and Mbadaugha appear to be among the few who have specifically advocated for an examination of the issue outside the confines of the federal regulation. There may indeed exist a sensible approach to curbing default without reducing academic opportunities for the vulnerable segments of the higher education student population.

A segment of the literature suggests that future policy makers may accurately navigate the landscape advocated by St. John, Starkey, Paulsen and Mbadaugha (1995) by considering student demographics among the contributors to default rates. For example, Knapp and Seaks (1992) demonstrated that family status, household income, graduation, and race to be the primary predictors of student loan default as opposed to

institutional classification. Confident in their data Knapp and Seaks (1992) argued that if two different higher education institutions, one comprised of low income African American single parent families and the other mostly economically advantaged white, could completely exchange staff members, faculty and administrators that the student loan default rates would remain unmoved. Numerous studies over the decades relating to proprietary school regulation, some as old as 1973, demonstrate that student demographics as opposed to institutional type were the primary factor for default rates. Several cite that when isolated, students at public institutions fitting the same demographic profile defaulted at nearly identical rates as those attending proprietary institutions (St. John, et al., 1995). They point out the difficulty these statistics in the realm of public policy stating:

Caught between public demands for reducing defaults and constituent demands for more loan funds, policymakers have naturally sought solutions within their control that promise to garner public approval (p. 62).

Contemporary corroborating data exists to round out these earlier studies (Miller, 2017) demonstrating that regarding default, little has changed since the inception of the student loan program; namely the most vulnerable student populations are the most likely to default regardless of institutional type. Miller (2017) compiled Table 2 utilizing available data from the National Center for Education Statistics.

This data suggests that key factors in student loan default are:

1. Income. 90% of defaulted students qualified for a Pell Grant and 40% came from the bottom 25% of income earners.
2. Parents education level. Neither parent held a college degree among 70% of

defaulted students.

3. Race. Nearly 50% percent of defaulted students were either Hispanic or African American (Miller, 2017).

**Table 2**

Share of Borrowers by Demographics and Default Status.

	Percent of defaulters	Percent of all borrowers	Percentage-point difference
<b>Age</b>			
18 or under	35	47	-12
20 to 29	33	21	12
<b>Attainment</b>			
Bachelor's degree	10	34	-25
Dropout	49	30	19
<b>Dependency</b>			
Dependent			
Independent with dependents			
<b>Parent education level</b>			
No college degree	70	54	15
<b>Finances</b>			
\$0 expected family contribution	43	25	18
Bottom 25%	40	27	14
Top 25%	10	20	-10
Borrowed for graduate school	5	18	-13
<b>Pell</b>			
Ever received Pell Grant	87	68	19
<b>Race</b>			
White	44	60	-16
Black or African American	30	17	13
Hispanic or Latino	18	14	4
<b>Parent education level</b>			
Public four-year	19	29	-11
Private nonprofit four-year	11	17	-6
Public two-year	31	33	-2
Private for-profit	38	19	18

*Note:* Table 2 outlines students entering college in 2003-04 who took out a deferral loan within 12 years of entry. Miller, B. (2017). Who are Student Loan Defaulters?

These studies suggest to policy makers that solutions to student loan default may exist outside of the academic realm and opportunities may exist for alignment with the other agencies including the Department of Health and Human Services given that the

root of the problem appears to be poverty. Miller (2017) points out that default occurs over time and often after a considerable amount of money is borrowed. Without tax subsidies, private institutions, non-profit and proprietary, must pass costs that are subsidized by the tax base at public institutions, directly on the students. Consequently, students attending private institutions are required to borrow more to cover generally higher tuition rates.

Whistle and Hiler (2018) indicated low-income students, defined as Pell Grant Recipients, have proven to be the least likely to persist and obtain a four-year-degree across all institution types. However, the study shows that certain institutions from across all sectors, including proprietary schools, have consistently been outliers and have produced high graduation rates among Pell Grant recipients (Whistle & Hiler, 2018). The methods used by these institutions was not in scope of the Whistle and Hiler (2018) report, however additional examination of these institutions, with a particular emphasis on common approaches may prove to be a valuable study for the future.

Taking into consideration the arguments of Woo (2002), Knapp and Seaks (1992), and Kantrowitz (2013) and others suggesting student demographics as the root of student loan default rates and the fact that Waters and United States Senate (2011) have in contrast advocated for holding institutions responsible, there does not appear to be centric solutions wherein accountabilities are shared nor advocacy for the rebalance of penalties (Enforcement of federal anti-fraud laws in for-profit education, 2005). During the introduction of the Gainful Employment Rule, the United States Department of Education produced a study demonstrating that race was an insignificant factor in default rates, citing it as only 1 percent of the variants in repayment rate (Guida Jr. & Figuli, 2012).

However, during the legal battle between the department and the Association of Private Sector Colleges and Universities, Assistant Secretary Eduardo M. Ochoa admitted that the data set which determined the minority student calculation did not include African American Students (*Association of Private Sector Colleges and Universities v. Duncan*, 2012).

Guida and Figuli (2012) published an article in the *University of Chicago Law Review* which argued that based on the literature it is “beyond debate” that low income and minority students “regardless of institution attended, graduated at lower rates, borrow at higher rates, and are more likely to default on their on their student loans than more affluent students” (p. 132). They also argued that because low-income and minority students attend proprietary institutions that the Gainful Employment Rule coupled with the 90-10 Rule has “unwittingly restricted minority and at-risk students’ access to higher education” (p. 132). They further argue that the notion that these student populations can simply be shifted to nonprofit or public colleges is pointless if the regulatory aim of the Duncan Era policies is to reduce student loan default. If the U.S. is truly concerned for low-income and minority student access to higher education, then according to Guida and Figuli (2012), the Gainful Employment and 90/10 Rules should be eliminated and replaced by policy which addresses the true root cause of default, namely poverty, rather than punish the institutions servicing these vulnerable student populations and by extension harm low-income and minority students through diminished access to education. Guida and Figuli (2012) refer to these specific regulations as creating a “perverse incentive for proprietary institutions to avoid enrolling low-income and minority students” (p. 147). They further predicted;

By predetermining program choices for students primarily based on their ability to pay for their schooling without borrowing, the GE rule will almost certainly have a disproportionate impact on low-income, minority, and other underserved students. Instead of helping disadvantaged students achieve their highest potential, the GE rule will reduce access to education for disadvantaged students based on the very factors that caused them to be disadvantaged in the first place (Guida & Figuli, 2012, p. 147).

### ***Migration from For-Profit to Non-Profit Due to the Duncan Era Regulations***

Another noteworthy phenomenon related to the proprietary school sector and the impact of the Duncan Regulatory Era is the recent trend of proprietary institutions migrating from their for-profit designation to a non-profit status or being purchased by and incorporated into public universities. One example is the interesting case of Stevens Henager College, established 1891, currently appealing a denial from the United States Department of Education for conversion to a non-profit (Shireman, 2016). Secretary Duncan's successor John King firmly denied the institution's conversion, arguing that it was an attempt by owner Carl Barney to circumvent regulatory scrutiny and still enjoy the profits of his colleges. Referencing the Stevens Henager denial in 2016, Secretary King stated, "This should send a clear message to anyone who thinks converting to nonprofit status is a way to avoid oversight while hanging onto the financial benefits...Don't waste your time" (Shireman, 2016, p.1).

The case of Education Management Corporation (EDMC) who successfully completed the sale of its proprietary school holdings to the non-profit Dream Center Holdings in January 2018, some of which have existed in one form or another for over

100 years, is noteworthy. The Dream Center, which is a missionary organization affiliated with the Assemblies of God churches, acquired the majority of EDMC's financially and regulatorily troubled institutions including the Art Institute, Argosy University, South University, and Western State College of Law. At the time of the acquisition, these institutions collectively had a student body of approximately 50,200 students making it the largest conversion of a proprietary institution to non-profit status in the nation's history. Yet not more than a year afterward, Secretary DeVos revoked their eligibility to participate in Title IV due to the violation of long standing, pre-Duncan Era violations of federal loan and grant disbursement standards.

Like the former EDMC institutions, it is alleged that several for-profit institutions have worked to convert to a not-for-profit status in order to avoid the scrutiny of the Duncan Era Regulations (United States Department of Education Joint Letter). Senators Warren, Murray, Durbin, Brown, and Blumenthal have worked to limit the Department of Education's approval of for-profit institutions from converting to non-profits calling the migration a "troubling pattern" (Quinlan, 2018, p. 1). The case of EDMC may not perfectly fit this narrative given that a complete change of ownership occurred; however other conversions including Stevens Henager Colleges would keep the present owner in a position of continued compensation without the augmented regulatory scrutiny imposed on proprietary schools. It could also be argued that many presidents and administrators at non-profit institutions are making substantial salaries and institutional leaders making the conversion are simply aligning with the sector. Others have argued that the reason behind this migration is simply the result of heavy-handed regulations, and have advocated that these institutions are doing what is necessary to remain open to their

students (Durden, 2017). Furthermore, Durden (2017) posited that if the entire non-profit higher education sector were put under the same regulatory scrutiny as private for-profit institutions the sector would diminish in a similar fashion.

The most notable example, heretofore mentioned, is the acquisition of Kaplan University, a large proprietary institution spanning across multiple states with a large online presence. In March of 2018, Secretary DeVos approved the purchase of Kaplan University by Purdue University, a public university in the state of Indiana. The fusion of institutions has been named Purdue Global and will utilize the footprint, institutional knowledge, and resources of the former Kaplan University as an opportunity for expansion and growth for Purdue (Kerr, 2018). These types of acquisitions are a recent phenomenon and further study may point to a potential method for public universities to address the growing number of adult learners and other non-traditional student bodies who have historically not been a major part of their institutional makeup.

### **The Legality & Constitutionality of Federal Regulation of the Private Sector**

Other literature has concerned itself with the legality and constitutionality of the Duncan Era regulations with particular concern over the fact that unlike the 90/10 Rule, regulations such as the Gainful Employment Rule were not legislated by Congress but rather introduced through bureaucratic rule-making (Program Integrity, 2014). For example, the US District Court of Washington DC ruled that the Gainful Employment Rule is “arbitrary and capricious (Program Integrity, 2014 p. 1), while others have taken it further by stating that Gainful Employment regulations are unconstitutional (Association of Career Colleges & Universities, 2014). Yet Senator Harkin has supported the rule claiming that the Department of Education is well within constitutional

bounds in their circumvention of Congress and that the bureaucratic rulemaking of unelected officials is a regular occurrence in federal affairs (United States Senate, 2011).

Negotiated rulemaking is a relatively new practice in American government. It emerged in the early 1980's as an alternative to the congressional process or litigation for creating federal regulations in a rapidly growing federal government. Negotiated rulemaking places regulatory development within the jurisdiction of the relevant bureau, as opposed to Congress and provides a system in which any interested parties can submit comments in a spirit of negotiation. It is this subversion of Congress that lead many to argue that the Duncan Era Regulations were an example of federal overreach and unconstitutional. Virginia Foxx a Republican member of the US House of Representatives during the Duncan Era argued that the gainful employment regulations are “an overreach of federal power that concentrate a sort of arbitrary power over certain individuals in the hands of an unelected few” (Warren, 2011, p. 1). This type of language resonated with some opponents of the Duncan Era regulations. However, through the courts, Secretary Duncan prevailed and the regulations were deemed constitutional and within the scope of executive authority.

Perritt (1987), identified the “delegation doctrine” as the source for the constitutionality of the negotiated rulemaking process. The delegation doctrine allows federally elected officials to delegate policymaking to other persons or institutions provided that the delegates are politically accountable (Perritt, 1987). Negotiated rulemaking was first used in relation to higher education law in 1992 after the reauthorization of the Higher Education Act of 1965. The Department of Education was tasked with codifying new regulatory accountabilities as they relate to the oversight

by the Department of Education, individual State education governing bodies, and accrediting agencies of institutions of higher education. Pelesh (1994) referred to this shared governance as a “Program Integrity Triad” which requires colleges and universities participating in Title IV programs to receive approval from and accept accountabilities by all three regulatory levels. Pelesh’s (1994) assessment of the departments first attempt at negotiated rulemaking was not favorable. He argued that the process was fair and the mediator was competent, however the department’s efforts were flawed and similar to the rulemaking sessions of the Duncan Era, the impacted parties who submitted more than 1,800 comments were frustrated by regulations deemed to be developed by fiat (Pelesh, 1994).

During the various negotiated rulemaking sessions of the Duncan Era consensus was not reached on any of the regulations introduced (Association of Private Sector Colleges and Universities v. Arne Duncan, 2016). This may be attributed in part to partisan politics but is likely due to the fact that the proprietary sector had so much at stake and was unwilling to cede much ground. When consensus is not reached, the Department has the authority to dictate the regulation in question albeit they can demonstrate that opposing voices were taken into consideration during the writing of the rules in question.

### ***Controversy within the Duncan Administration***

While much of the regulatory battle occurred over the negotiated rulemaking, an additional controversy had arisen. According to Sloan (2014), Robert Shireman prior to the release of the early regulatory drafts of the Gainful Employment Rule, met with Steve Eisman, a Wall Street Short Seller (one who makes money when share prices decline).

Eisman received some level of notoriety for his lucrative short selling position during the housing crisis of 2008 – 2009 and is the subject of a best-selling book by Michael Lewis known as the “The Big Short” and portrayed by actor Steve Carrell in the 2015 movie based on the book. Sloan (2014) alleges that Shireman shared details regarding the forthcoming Duncan Era regulations with Eisman allowing short sellers to earn financial gains by hedging against the devaluation of higher education stock. Using the Freedom of Information Act, Sloan and her colleagues at the Coalition for Educational Success “uncovered incriminating emails revealing that Education officials, including Shireman, were in contact with short sellers about the proposed regulation” (Sloan, 2014 p.2). Davis (2010), named Shireman’s colleague and former employee Pauline Abernathy, Vice President of The Institute for College Access of Success, to have also taken part in communicating the regulatory detail to short-sellers. Kaplan (2010) also named David Bergeron, Acting Deputy Assistant Secretary for Policy and Budget. Shortly after these meetings, Eisman delivered a number of speeches and congressional testimony warning that for-profit education would be the next bubble to burst. Kaplan (2010) noted that shortly after this series of speeches stock in Career Education Corp fell 12%, and Apollo Group (parent company of the University of Phoenix) fell 6%. Weisman (2011) in a letter to the Securities and Exchange Commission stated that the Citizens for Responsibility and Ethics in Washington (CREW) had also obtained emails through the Freedom of Information Act and forwarded them as evidence that the Department of Education had been leaking regulatory information to Wall Street short-sellers. Writing about this potential conflict of interest, Davis (2010), stated:

So what's going on here? If a Republican administration had issued a regulation at a time like this that disproportionately will hurt minorities and lower income people — those who predominantly attend for-profit colleges — can you imagine the cries of outrage from liberal Democrats like me? (2010).

The controversy ended with a bipartisan disagreement when the inspector general released a report in 2012, that according to Stratford (2014), largely cleared the Department of Education from the allegations. The report did criticize the department for lack of transparency and claimed that certain department members would be investigated for ethics violations. Republican Senators Burr of North Carolina and Coburn of Oklahoma called the report incomplete and argued that it was not expansive enough and limited to a narrow set of communications, ignoring others and the Coalition for Educational Success claims that 95% of requested documents were blocked by the Department of Education (Stratford, 2014). Shireman resigned before the investigation concluded, although he remained a salaried consultant to the department and as noted by Sloan (2014) “documents show Education officials allowed Shireman to continue receiving health care, paid leave and retirement benefits although the department’s personnel manual specifically prohibits consultants from receiving such benefits” (Sloan, 2014, p.3). Shireman was replaced by James Kvaal, a former employee of Shireman at The Institute for College Access of Success.

### **Concluding Thoughts on the Duncan Era Regulations**

Due to the recency of the Duncan Era Regulations, the literature is not as vast as the decades of examination into the 90/10 Rule and post 1992 regulatory era. However, similarities are found within the literature between supporters and detractors of the

Gainful Employment Rule. Both opponents and proponents use similar arguments to support their position as those concerned with the 90/10 Rule. For example, Senator Tom Harkin accused private sector colleges of being predatory and used Ashford University, from his home state in Iowa, as an example (United States Senate, 2011). Harkin, also a vocal supporter of the 90/10 Rule, argued that the Gainful Employment regulations will further curb abuses of private sector institutions (Field, 2011). Student loan default also remains central to the arguments in favor of the Gainful Employment Rule. However, the argument has somewhat advanced, with greater mention of debt load as a key contributor to loan default. In a 2014 press release the U.S. Department of Education defended the Gainful Employment Rule claiming that graduates are straddled with debt and have poor career prospects (United States Department of Education, 2014).

In August of 2018, The United States Department of Education published in the Federal Register its intent to rescind the Gainful Employment Rule. This rescission of the flagship regulation signals the closure of what is considered the most powerful and influential era in the history of the United States Department of Education (Strauss, 2015). The stated reasons for the rescission include:

- Research data that undermines the validity of debt to earnings rates used as a threshold for Title IV eligibility.
- The disclosure and reporting requirements are more burdensome than the department initially anticipated.
- Errors and inconsistencies in job placement rates may mislead students making enrollment decisions.
- The department determined that program level data should be made available for

all institutions participating in Title IV programs as opposed to the rule applying strictly to the proprietary education sector (Department of Education, 2018).

The department instead will be augmenting the college scorecard, or a similar web-based tool for institutions of all types (private and public alike), providing data on a range of outcomes and requiring institutions to publish this scorecard. In theory this will provide prospective students with transparent insight into graduation rates and other accountabilities arguing that informed students are more likely to choose schools with stronger outcomes thereby allowing for a market driven approach to institutional accountability (Department of Education, 2018). At the time of this writing the Department is seeking public input on both the rescission of the Gainful Employment Rule and the enhanced online college scorecard. It is likely that during this period of public comment that similar partisan arguments to those made over a quarter century and detailed in this review will reemerge in an attempt to persuade public opinion.

While a number of campuses have closed their doors as a result of being unable to maintain regulatory compliance, including giants like Corinthian Colleges and ITT Technical Institute, there remain institutions who have succeeded in spite of the challenges presented. However, institutions such as Strayer University remain solvent and even prosperous from a financial and regulatory standpoint. While this disparity is interesting, no literature is readily available that provides insight into what the leaders of these institutions have done differently in the new regulatory environment and it is unclear as to whether or not there are distinguishing factors. While this research opportunity is expansive, an examination of the leadership perceptions possessed by those at the helm of institutions impacted by the Duncan Era regulations is a useful

element in understanding the wider phenomena.

### **Leadership Theory**

There are a variety of leadership forces as well as corresponding leadership theories at play in the regulation of proprietary education and the adherence to those regulations on the part of institutional leaders. The leadership forces included in this work are both the institutional leaders of proprietary institutions as well as regulators and rule-makers. This section will briefly review three of the leadership theories, namely:

- Servant leadership
- Toxic Leadership and
- Compliance and Integrity Management

These interrelated theories, will be discussed in relation to both institutional leadership as well as regulators of proprietary education.

#### ***Servant Leadership***

Leadership at proprietary institutions includes oversight boards, administration, staff and faculty; each of whom have significant influence on students at various points in their academic lifecycle. Robert Greenleaf who coined the term Servant Leadership described it by stating “the servant-leader is servant first...It begins with the natural feeling that one wants to serve, to serve first” (Greenleaf, 1977). In the 2002 forward to Greenleaf’s (1977) book entitled *Servant Leadership; A Journey into the Nature of Legitimate Power and Greatness*, Covey (2011) summarizes servant leadership in part as the act of principled exercise of natural authority or one’s conscious ability to choose, an ability he argues is unique to humankind. As one exercises their natural authority in a principled way, particularly in a manner that empowers the follower (the greatest service a leader

can give), one builds up a storehouse of moral authority which is the legitimate trust and respect of others (Covey, 2011). As the storehouse of moral authority fills, the principled leader attracts principled followers (2011). Not only would this view of servant leadership produce empowered graduates who will in turn serve their communities, but these graduates will also remain aligned through principle to the institution and its servant leaders.

According to Greenleaf (1977) servant leadership requires an emphasis on the development of individual human beings and by extension the broader community to which they belong. Furthermore, Greenleaf (1977) argued that institutions, not just individual leaders, must also operate as servant. He advocated for the deemphasis of hierarchy and suggested a model of first among equals (1977). It is hard to imagine an institution with this type of alignment to be of concern to regulators. As student needs are placed in front of profits and faculty and administrative favor, the institution is in a better position to develop and foster the growth and development of its students. Those proprietary institutions working with large numbers of minority and low-income students are in a particular position to provide a service to the individual student and the community to which they belong.

Greenleaf (1977) advocated for Servant Leadership throughout a number of sectors including higher education. He expressed specific concern for the use of coercive power as a means for the institution “to compel or covertly manipulate” students (Greenleaf, 1977, p. 180). This phenomenon can take place at multiple levels within an institution of higher education, including the abuse of superior subordinate relationships between faculty and students or the compulsion of administrators to prioritize the interests of the

institution and its leaders over fundamental student support services. Greenleaf's concern strikes at the heart of the argument made by proponents of higher regulatory scrutiny of proprietary institutions. Harkin and Field (2011) have argued that stronger regulatory measures will curb abuse, including predatory behavior such as coercing students to borrow large sums of federal dollars to pay for their education (United States Senate, 2011). High tuition costs leading to higher student debt levels is a challenge across all higher education sectors and not unique to the proprietary sector, however Servant Leadership would require administrators to exercise a delicate balance between encouraging students to persist in their education while also avoiding excessive borrowing. While the Department of Education requires each borrower to complete entrance counseling, true exercise of servant leadership in higher education, would require administrators to supplement this information and work closely with students throughout their academic experience to help them understand the implications of future loan debt.

Greenleaf predicted that the "people who have the power to turn the money on or off" would in time be less apt to support institutions who exist strictly for the sake of scholarship (Greenleaf 1997, p. 202). The investments made by the private sector in proprietary institutions may serve as evidence for the accuracy of Greenleaf's prediction. Greenleaf (1977) suggested that servant leadership in higher education institutions, regardless of designated sector, also involves preparing "students to serve and be served by the present society" (p. 203). Graduating with less debt will assist students in achieving self-reliance and place them in a more favorable position to be active servants in their communities. Furthermore, as students transition into the workforce, they

become bearers of responsibility and leaders. Greanleaf (1977) therefore argues that the classroom should be viewed as more than an environment where superior and subordinate transact in knowledge, but should also serve as a “laboratory for learning to bear responsibility well” (P. 211).

### ***Toxic Leadership***

A theory that works well as a bookend to Servant Leadership is Toxic Leadership. Lipman-Blumen (2006) has done extensive work on the impact of Toxic Leadership and defines it as “a process in which leaders, by dint of their destructive behaviour and/or dysfunctional personal characteristics, inflict serious and enduring harm on their followers, their organisations and non-followers alike” (Lipman-Blumen, 2010, p.1). The following examples of Toxic Leadership are excerpts from Lipman-Blumen’s (2010) Conceptual Framework and have been selected from among a broader list as particularly important to the regulation of proprietary education sector:

- Leaving their followers (and sometimes non-followers) worse off than they found them;
- Engaging in corrupt, criminal and/or other unethical activities;
- Playing to the basest fears and needs of their followers;
- Misleading followers through deliberate untruths and misdiagnoses of issues and problems;
- Failing to nurture other leaders, including their own successors;
- Failing to recognize or ignoring and/or promoting incompetence, cronyism and corruption;
- Behaving incompetently by misdiagnosing problems and failing to implement solutions to recognized problems (Lipman-Blumen, 2010).

Each of these bulleted behaviors are claims leveled against the proprietary education sector. Leaders will do well to be mindful of their behavior in relation to them.

Regulators and rule-makers also play an obvious leadership role with the potential for impact on the nation's citizenry including higher education access and academic opportunity. Public policy presents some interesting leadership challenges given the federalist structure of state and federal powers along with the authority granted to unelected bureaucrats and accreditors all at interplay. With partisan politics and ideological wills added to the already complex mix of checks and balances, the challenge of regulatory compliant leadership becomes complex. For the proprietary education sector, it is the partisan or ideolog adhering to dogma over utility or empiricism, on both sides of the debate, that has been most troublesome in achieving balanced regulation of the sector. Both opponents and proponents of the sector, as the literature review demonstrates, have misrepresented (or at least misunderstood) critical data and championed the cause of low-income and minority students, which at the fringes of both parties, may do so through the exploitation of this vulnerable student population. Lipman-Blumen (2006) similar to Greenleaf (1977), suggested that one litmus test in this regard is to recognize that as we "take up the immense cause of the Other, we inevitably learn to lay down the smallness of ourselves" (Lipman-Blumen, 2006, p. 254). When an academic leader violates the trust of vulnerable students, by promoting a path to a better career in the shortest time possible, when the true intent is to profit first, this leader would fall under the umbrella of toxic leadership. Likewise, the public official, when developing policy to advance the cause of the same student group, does so with the primary motive to build their personal reputation and political advancement, that policy maker falls under

the umbrella of toxic leadership. While neither of these motivations need necessarily be at odds with truly serving students, the delicacy of the matter lies in the order of the priorities established by those in positions of power.

Lipman-Blumen describes certain control myths that are at play in the psychology of the follower including those that instill “the fear of repercussions” (Lipman-Blumen, 2006, p. 133). According to Lipman-Blumen (2006), there are a variety of thought processes among those who fall into this category. Among them is a concern for safety in that an “unsuccessful challenge to the leader will result in punishment for the challengers, as well as those they represent” (Lipman-Blumen, 2006, p. 133). This has often been a weapon used by partisans or ideologues, and Duncan has been accused by critics as being ideological in the approach to regulating proprietary education (Whitman & Duncan, 2018). Likewise, it can be argued that politicians who support proprietary education may also be, at least in part, doing so under ideological pretenses and therefore possess the same potential for toxic abuse of power. However, former Secretary Duncan has repeatedly denied that his regulatory approach was built upon an ideological bias (See Appendix F).

Lipman-Blumen (2006), aligns with Greenleaf advocating for leadership that seeks to do good. She argued “contributing to the good of the larger group, rather than stockpiling one’s own power and wealth, would emerge as a more appropriate grail to be sought” (p. 249). This advice is also applicable to leaders in higher education who are also in positions where toxic leadership could inflict severe damage. Proprietary education, as has been heretofore demonstrated has had its share of toxic actors. Educational leaders and regulators jointly share the burden of regulatory compliance and institutional

sanctions up to and including closure when standards are not adhered to. This is particularly important when considering the impact that institutional disfunction has on students who have put their faith in and aligned their futures with the promise of a better career through higher education.

### ***Compliance and Integrity Management***

Institutional leaders in proprietary education settings are responsible for regulatory compliance including the shaping of regulatory awareness and developing a culture of regulatory adherence. Bleker-van Eyk and Houben (2017) introduced the term “Compliance and Integrity Management” to describe a leadership theory that fosters not only compliance but self-regulation and market discipline. This theory encourages organizations to hold themselves accountable to standards higher than the base requirements imposed by regulatory authorities. For example, a manufacturing plant may hold its managers to higher safety standards than required by OSHA. The theory suggests that through good faith demonstrations of regulatory discipline that regulators and organizations are more likely to work as partners rather than adversaries thereby diminishing the need for regulators to place restraints that may inadvertently serve as impediments. Specific to this study, Ananthalakshmi (2011) noted a rise in self-regulation by proprietary schools during the Duncan Regulatory era suggesting it was a positive outcome of the regulatory environment. For example, AdTalem Global Education holds itself to an 85/15 ratio as opposed to the federal requirement of 90/10 (Douglas-Gabriel, 2016). While not all institutions can afford to self-regulate to this extent, there are perhaps other standards that can be implemented to demonstrate the commitment to serving students.

In an age of heightened regulatory scrutiny, it is not enough for proprietary education leaders to simply point to the inequity of regulatory measures. As evidenced by institutional closures, and the regulatory sanctions that have been issued, a non-compliant leader, whether through will or ignorance, is a threat to their institution and its students. Sutinen and Kuperan (1999), synthesized a number of leadership motivations for regulatory adherence pointing out that avoidance of sanctions as a determinate is only a partial explanation for why leaders choose compliance over noncompliance. Ensuring that noncompliant or illegal gains are not greater than compliant or legal gains as a result of affixed penalties, is not as effective as one might assume on the surface (Sutinen & Kuperan, 1999). In part, this is due to high penalties being difficult to enforce, and violations difficult to detect. In other words, there are numerous examples of individuals and organizations (across a wide array of industries and circumstances) who were able to beat the system or gain from non-compliant activity. Consequently, the fear of regulatory sanctions is not, according to Sutinen and Kuperan (1999), sufficient in and of itself as motivation or deterrent for leaders to operate compliantly. Other qualities possessed by compliant leaders include an intrinsic motivation fueled by a sense of moral obligation (Sutinen & Kuperan, 1999). Policy makers, in the case of proprietary education regulation, have provided little to no allowance for personal moral values as primary motivator for regulatory compliance, yet as Sutinen and Kuperan (1999) argued, it is the rule rather than the exception that people in a variety of scenarios choose compliance over personal gain. In addition to the intrinsic motivations, leaders choose compliance for extrinsic reasons including respect, status, social reputation, and other social influences, each of which, are powerful motivators. Non-compliant institutions run the

risk of bearing a tarnished brand and few leaders, according to Sutinen and Kuperan (1999), wish to have their names associated with institutions of low credibility or poor reputation. They reference Smith (1759), stating he “explicitly portrays human economic motivation to be multidimensional, arguing that psychic wellbeing is based on acting morally and receiving the approval of others, as well as enhancing wealth” (Sutinen & Kuperan, 1999, p. 6). This would suggest that compliant leadership in proprietary education (as well as other regulated sectors) is a multidimensional combination of psychological and other motivational forces. Consequently, regulators may do well to avoid broad sweeping sanctions that only account for a minority of leaders who are motivated solely by profit and the even smaller subset of that minority who are willing to place their profit motives above student needs.

Institutional leaders also have the ability, if not an obligation, to play a role in shaping public policy as it relates to their sector. In the United States, most regulatory agencies including the U.S. Department of Education provide public comment periods, negotiated rulemaking, and other avenues for institutional leaders to provide input to the regulatory process. Van Cise (1966), pointed out that often federal regulators lack a thorough understanding of the sectors they regulate. This is in part due to turnover in federal enforcement agencies including both voluntary turnover as well as partisan turnover during administration changes. The primary challenge however is that technology encourages rapid change throughout most industries including education. Van Cise (1966) argued that under these circumstances “no single man or group of men in government service could possibly have more than the most superficial awareness of the

complex commercial intercourse which speeds today over our ever-changing industrial highways” (Van Cise, 1966).

In the absence of large and intrusive regulatory agencies with the resources to research and document industry practices, leaders in proprietary education, and other sectors, can serve by informing regulators of the complexities and nuances of their institutions that may not be apparent from the outside.

### **Summary**

This chapter has examined the existing literature on the federal regulation of the proprietary education sector through dissecting the review into two primary sections. The first section demonstrated that the perceptions of higher education leaders in proprietary education are not included in the current body of literature. The second section reviewed the literature arguing for or against the Duncan Era regulatory measures utilizing a chronology of the development of federal regulation in proprietary education. Within this second section, the arguments contained within the literature can be understood through three primary foci:

1. Equitable administration of these regulations.
2. The impact and efficacy of the regulations including the impact on low-income, minority students, and other vulnerable student populations.
3. Examining the legality and constitutionality of the federal role in regulating the private sector

Including the perceptions of those who have been leading proprietary institutions during the aftermath of the Duncan Regulatory Era will help round out the current literature. Little or no research appears to exist outside of congressional testimonies

regarding higher education leader's perceptions of this era. By adding this research to the broad range of existing literature on the topic, a more holistic understanding may be provided for the various stakeholders of private sector institutions as well as others seeking to gain an understanding of the regulatory phenomena and its impact on students, taxpayers, and other proprietary education sector stakeholders.

## CHAPTER THREE: METHODOLOGY

### **Introduction**

The purpose of this phenomenological qualitative study was to describe the perceptions of higher education leaders of private sector institutions about the Duncan Regulatory Era. These insights will assist in understanding the ramifications of the regulations on institutional stakeholders during this era, inform future policy decisions, and provide insights into compliant leadership under regulatory scrutiny, particularly while servicing low income and minority student populations. In this chapter the researcher will present the research question and outline the research design, data collection and the ethical considerations of this phenomenological study.

### **Research Question**

To aid this phenomenological qualitative study, the following research question guides this study: What are the perceptions of higher education leaders who worked in proprietary sector institutions during the Duncan Regulatory Era? Within this research question four key sub-questions also guide this study. These are:

1. How do proprietary education leaders describe the Duncan Regulatory Era's impact on the operations of their institution?
2. Do proprietary education leaders consider the policies of this era beneficial to students?
3. How do proprietary education leaders describe the impact of these regulations on low-income and minority student populations served in large measure by proprietary education institutions?
4. What approaches to regulatory compliance should leaders of proprietary institutions take under future conditions of heightened oversight?

### **Research Design**

The research methodology used in a given study is determined by the research problem being studied, the purpose of the study, the theory base, and nature of the data being reviewed (Roberts, 2010). In seeking to understand the impact of the Duncan Regulatory Era, a qualitative phenomenological study of the perceptions of proprietary education leaders who have led institutions through the Duncan Era regulatory environment has been conducted. The researcher employed the use of a phenomenological design in order to understand the reactions or insights in the post Duncan era impacting higher education. The rich data that exists would be most aptly gathered in a qualitative setting.

Phenomenological research allows the researcher to ascribe meaning to lived human experiences based on the description of these experiences by study participants (Creswell, 2009). Once these qualitative experiences have been extensively studied, the researcher is able to identify patterns and “relationships of meaning” (Creswell, 2009, p. 13) that become valuable insights into a particular phenomenon. Effective analysis of this type requires the researcher to set aside his or her own experience as it relates to the study and place their focus on the experiences of study participants (Nieswiadomy, 1993). Understanding the essence of the professional experiences of the participants will fill a void in existing literature about the impact of the Duncan Era of higher education regulation. For this reason, the researcher has determined that a qualitative phenomenological study was appropriate to enhance the broader understanding of the federal regulation of proprietary education.

To meet the objectives of this study, leaders from proprietary four-year degree granting institutions were interviewed. Eliminating leaders from vocational colleges and two-year degree granting institutions allowed for a tighter study and avoided any trappings that might occur by comparing the lived experiences of administrators with different regulatory landscapes. A portion of the questions and responses were open-ended, requiring a phenomenological qualitative analysis in order to understand the perceptions of administrators who personally labored under the Duncan Regulatory Era and what their responses might suggest for future regulatory consideration. Other questions were closed-ended allowing for a demographic profile of those who participated in the survey. These closed-ended questions included the gender of the participants, their race, the number of years in their leadership role, and student demographics at their institutions. The open-ended questions asked participants why they believe the regulatory environment was heightened under the Obama Administration, what benefits have come from the heightened regulatory environment, and what challenges have come as a result of the regulations; the impact on post-secondary students is among the valuable insights gained from these questions. Appendix B provides a list of the questions employed to obtain these insights. Additionally, leaders were asked what type of leadership will be required in the future to navigate challenging regulatory environments and what suggestions they have for future regulators.

The interviews were conducted via recorded telephone conversation using Tape-A-Call-Pro which is an iPhone app. All participants were notified in advance and agreed to participate in a recorded conversation. Tape-A-Call-Pro allows a phone conversation to be recorded and also has the feature of transcribing the call. The transcripts from Tape-

A-Call-Pro were reviewed and compared to the audio recordings. When the transcript contained errors, or in other words did not match the audio recording, manual adjustments to the transcripts were made. Once the responses were transcribed, all responses were read, and through the aid of NVIVO responses were used to identify general categories or themes. NVIVO allows for the creation of theme nodes which help the researcher catalog and organize data by themes. NVIVO displays these nodes in a way that the researcher can visually see the density of each theme. Once themes were identified and perceptions of these particular leaders about the Duncan Regulatory Era were understood, the data was used to identify leadership directions as well as regulatory recommendations that can be used by sector leaders in the future. Having a stated purpose for the qualitative discoveries satisfies what Creswell (2009) suggests is a primary purpose for research.

### **Data Sources/Proposed Participants and Recruitment**

As stated previously, the data was solely derived from university and college administrators and gathered through telephone interviews. Participants were identified through utilizing trade associations that serve proprietary Colleges and Universities. Participants are from proprietary four-year degree granting institutions. The proprietary education landscape is made up of several institutional types ranging from vocational schools to professional schools. The regulatory requirements of a nationally accredited vocational college, such as a truck driving school or a cosmetology school differ from a regionally accredited university. Focusing solely on institutions offering four-year programs allows for a more consistent “apples to apples” sound study than comparing the leadership experiences of leaders across institutional types with markedly different

regulatory responsibilities and requirements. Creswell (2009) suggested that the goal of qualitative researchers is to reach a point of saturation, where adding additional participants to the study will not achieve new perspectives. For a qualitative phenomenological study, Creswell (2009) suggests between 5 to 25 participants. In this particular study, 12 participants proved to be adequate for reaching saturation.

Prospective participants were initially identified through various online directories. However, very few of the identified leaders agreed to participate in the study citing concerns of retaliation by regulators. Eventually rapport was developed with a handful of state association leaders, who helped identify and recruit the majority of study participants.

### **Data Collection Tools**

Interviews were conducted via telephone and recorded. According to Burke and Miller (2001), comprehensive telephone interviews have become a widely used research method and their suggested structure was employed during the data collection process.

This method is outlined as follows:

1. The Pre-Interview Phase.
2. During the Interview Phase
3. Post Interview Phase

#### *Pre-Interview Phase*

This phase was concerned with preparing for the interview and included the organizing of research questions and ensuring that the research questions were clear and not leading. During this phase, the research questions were emailed in advance to participants allowing them the ability to gather any data they felt to be relevant to their

responses. Burke and Miller (2001) argued that this approach yields “more thick, rich descriptive data” from those participating in the study (p. 1).

Additionally, this phase was used to test various software used for recording conversations. It was critical to ensure that this technology was working correctly in advance to avoid glitches during the participant’s responses. After experimenting with several applications, the researcher chose to use Tape-A-Call-Pro which is an iPhone application. This particular tool was chosen for ease of use thereby ensuring that user error was minimized during interviews. Tape-A-Call-Pro also transcribes the call which proved useful.

Logistically, each participant was assigned a number that corresponded with the written transcripts of their recording to ensure easy identification of participants to their responses. Utilizing a number also aids in protecting the promised anonymity of the participants. Finally, consideration was given to the scheduling of interviews. The Microsoft Outlook Calendaring system was utilized to ensure that each participant had adequate time on their calendars to participate in the interview along with reminders at various intervals prior to the appointment.

#### *During the Interview Phase*

A variety of techniques and approaches during this second phase assisted in ensuring the integrity of the study remained sound (Burke & Miller, 2011). These include consistency in tone when asking questions, which is improved as the researcher becomes intimately familiar with the questions during phase one. Furthermore, asking the questions of all participants in the same order helped to ensure an orderly and equitable study.

During the phone interview the researcher must encourage the interviewee to share as much as possible including probing for additional information and asking for elaboration on elements of the response that might be important for the study (Burk & Miller, 2011). Impromptu probing can be problematic if the researcher is not prepared in advance. Additionally, a fine line exists between leading and probing. It was therefore helpful to have the types of probing questions written in advance and on hand at the time of the interview. These included “That’s interesting...could you explain a little more” or “Lets see, you said...just how do you mean that?” which according to Burk & Miller (2011) serve as rejoinders which entices the “participant to expand upon his/her thoughts, without biasing him/her as to what you think of the information provided thus far” (Burk & Miller, 2011, p. 1).

#### *Post-Interview Phase*

Thematic analysis was used in this particular study, which is a time-consuming process. Preparing in advance for this phase ensures the researcher is organized and the integrity of the data intact (Burk & Miller, 2011). The interviews in this study were robust, lasting about 60 minutes on average, and provided ample opportunity for leaders to articulate their perceptions.

The transcripts from Tape-A-Call-Pro were reviewed and compared to the audio. In places where the auto-transcription process contained errors, these errors were corrected and the final transcript text was imported into NVivo. Themes and patterns were identified and cataloged as the data was reviewed. Through NVivo theme nodes were created, allowing for the import of sentences and paragraphs falling under an identified theme. This process ensured that thematic data remained organized and reviewing one

node at a time assisted the researcher in determining the strength of an individual theme. At the conclusion of the thematic process, certain nodes demonstrated stronger themes than others. Seven primary themes strongly stood out; each were nearly universally articulated by the research participants. These were:

Theme One: Call for Regulatory Equity.

Theme Two: Regulations Driven by Ideology.

Theme Three: Regulations Enacted in Politically Charged Environment.

Theme Four: Compliance Creates Critical Resource Strain.

Theme Five: Culture of Compliance.

Theme Six: Regulatory Harm to Students Outweighs the Benefits.

Theme Seven: Particular Impact to Low-Income and Minority Students.

From these themes, the outcomes of the study ultimately emerged providing the basis for identifying the perception of proprietary education leaders regarding the Duncan Regulatory Era. Chapter Four contains a thorough review of each of these themes.

### **Ethical Considerations**

The Creighton University Institutional Review Board was employed to evaluate the methodology of this study. According to the Creighton University research services (2016) the purpose of the Institutional Review Board is as follows:

1. Determining whether human subjects have volunteered for a research endeavor by means of informed consent;
2. Determining whether risks to these subjects are outweighed by potential benefits to them and/or society; and

3. Evaluating the importance of the knowledge to be gained by the research endeavor (Creighton University Research Services, 2016).

Once approval from the Institutional Review Board was obtained, the interview process was able to commence.

The researcher provided each study participant a statement informing them how the information would be used. This was an important step in that ethical considerations of this study include the fact that parties interviewed may be competing for the same students and therefore can be considered competitors. As a leader in higher education myself, I may be seen as a competitor. Furthermore, some of the information shared may be considered proprietary. These combinations may prevent full disclosure during the interviews as participants may be concerned with sharing information that may help the competition. To mitigate these concerns, a guarantee of confidentiality was provided informing the participants that their names or the names of their institutions will not be revealed. Finally, out of concern for the spotlight shined on their personal leadership approaches, participants may exaggerate or otherwise alter actual practices in order to maintain a persona of what they might deem ideal leadership traits. In addition, as a technical competitor, I as the researcher will need to take care not to use any information disclosed in a manner that might place the participant at a disadvantage for taking part in the study. While the study will be designed to provide a performance advantage for all interested in reading the study, and as the researcher I anticipated that I would benefit from discovering the perception and practices of others, it will be imperative that the advantages sought will not exceed these obvious tangible benefits.

To prevent ethical breaches, the data was safeguarded and only accessed by the researcher. First of all, the recordings of the interviews provided a full record of any information disclosed by the participants and therefore served as a documented record of what was disclosed and therefore received by the researcher. Second the information remained secured using a limited number of computers and data drives. The drives used were password protected thereby further ensuring the safety of the data.

### **Summary**

This chapter has identified the methodology for this phenomenological qualitative study. Understanding the essence of the professional experiences of proprietary education leaders during the Duncan era along with their perceptions fills a void in existing literature about the impact of the Duncan Era of higher education regulation. For this reason, the researcher has determined that a qualitative phenomenological study was appropriate to enhance the broader understanding the federal regulation of the proprietary education sector. To aid in the understanding of this phenomenon, the research question along with four key sub-questions was outlined in this chapter. A phenomenological design was employed in order to obtain the qualitative data necessary to understand the research question and the sub-questions. A description was provided on how research participants were identified and selected along with the details regarding the requirements for participation. A detailed description of the data collection tolls was provided along with the data collection process which entailed a three-phase method:

1. The Pre-Interview Phase.
2. During the Interview Phase
3. Post Interview Phase

A description of the work done by the researcher and the participants during each phase was provided. During the work done in these phases seven primary themes emerged from the data collected. These were:

Theme One: Call for Regulatory Equity.

Theme Two: Regulations Driven by Ideology.

Theme Three: Regulations Enacted in Politically Charged Environment.

Theme Four: Compliance Creates Critical Resource Strain.

Theme Five: Culture of Compliance.

Theme Six: Regulatory Harm to Students Outweighs the Benefits.

Theme Seven: Particular Impact to Low-Income and Minority Students.

From these themes, the outcomes of the study ultimately emerged providing the basis for identifying the perception of proprietary education leaders of the Duncan Regulatory Era. Chapter Four provides a detailed review of each of these themes. Finally, the ethical considerations of this study were outlined along with a description of safeguards taken to ensure the integrity of the phenomenological qualitative data collected.

## **CHAPTER FOUR: FINDINGS**

### **Introduction**

The purpose of this phenomenological qualitative study was to describe the perceptions of higher education leaders of private sector institutions about the Duncan Regulatory Era. These insights will assist in understanding the ramifications of the regulations on institutional stakeholders during this era, inform future policy decisions, and provide insights into compliant leadership under regulatory scrutiny, particularly while servicing low income and minority student populations. This chapter will briefly review the central research question, the scope of the study, and provide a qualitative presentation of the data results.

### **Review of Central Research Question**

During the Duncan Regulatory Era, strong higher education regulatory measures were enacted, most of which were directed solely at the proprietary education sector. While a considerable amount of literature exists on the regulations introduced under Secretary Duncan's tenure, most authors have focused on the merits of the rules or their impact on student loan debt repayment. Consequently, a hole exists in the current body of literature and the perceptions of institutional leaders regarding these regulations is needed to better understand this regulatory era. In support of this aim, the results of the phenomenological qualitative study are presented in this chapter, designed to answer the following question:

What are the perceptions of proprietary higher education leaders who worked in proprietary education during the Duncan Regulatory Era?

Within this research question, four key sub-questions also guide this study. These are:

1. How do proprietary education leaders describe the Duncan Regulatory Era's impact on the operations of their institution?
2. Do proprietary education leaders consider the policies of this era beneficial to students?
3. How do proprietary education leaders describe the impact of these regulations on low-income and minority student populations served in large measure by proprietary education institutions?
4. What approaches to regulatory compliance should leaders of proprietary institutions take under future conditions of heightened oversight?

With the regulatory landscape in motion, there is value in learning how successful higher education leaders perceive compliance issues and what work they have done to remain compliant. Additionally, these perceptions may prove useful in determining possible future regulatory options and considerations for policy makers. Finally, the approaches taken by these leaders in servicing large percentages of America's low-income and first-generation minority students under these regulatory controls, may be instructive for leaders across the post-secondary academic landscape.

### **Review of Scope of Study**

The study captures the experiences of proprietary education leaders, in their own words, and how they perceive the impact of the heightened regulatory era on the sector and the institutions they are leading. The researcher employed the use of a phenomenological design in order to understand the reactions or insights in the post Duncan era impacting higher education. Phenomenological research allows the researcher to ascribe meaning to lived human experiences based on the description of

these experiences by study participants (Creswell, 2009). Furthermore, phenomenological research is a strong strategic approach when trying to explore challenging problems and learn from the experience of others (Neubauer et al., 2019). For these reasons, the researcher determined that a qualitative phenomenological study was appropriate to enhance the broader understanding of both higher education and the federal regulation of proprietary college regulation.

### **Participants**

The twelve study participants were universally asked 13 questions (see Appendix B) as well as appropriate follow up questions based upon their responses. These questions were designed to provide insight into the primary research question and the four key sub-questions. To ensure that perceptions were accurately portrayed all interviews were recorded using a smartphone app entitled TapeACall Pro. This app recorded each call and the audio files were submitted to transcribe, an online transcription service. The researcher then edited each of the transcriptions using NVivo. To ensure accuracy, the audio and the text files were accessed simultaneously, a useful feature in NVivo and any transcription errors were corrected with this method. Utilizing NVivo, the transcripts were coded and themes were identified and explored. This chapter presented the primary themes utilizing participant quotes to illustrate their patterns and connections.

Throughout the chapter, the findings of each telephone interview are explored, themes are reviewed, and relevant data is presented. Thematic analysis was used in this particular study, utilizing NVivo to determine themes and patterns. From these themes, the outcomes of the study ultimately emerged providing the basis for identifying higher education leaders' perception of the Duncan Regulatory Era.

To ensure that each participant was capable of contributing to the study in a meaningful way, it was required that each leader was responsible for regulatory compliance at a proprietary institution of higher education offering four-year degree programs. By eliminating leaders from strictly vocational colleges and two-year degree granting institutions, a tighter study emerged which avoids any trappings that may occur by comparing the lived experiences of administrators with different regulatory landscapes. These criteria ensured that the study contained appropriate leadership perceptions of the phenomenon in question.

Upon approval of the Creighton University Institutional Review Board (see Appendix C), email invitations were sent to several dozen leaders of proprietary institutions that fit the aforementioned requirements (see Appendix D). Prospective participants were initially identified through various online directories. However, very few of the identified leaders agreed to participate in the study. Many of those contacted were interested in the outcomes of the study and expressed encouragement that leaders within the proprietary education sector would be provided a voice, but ultimately declined to participate. Although all study participants have been kept anonymous, three leaders specifically cited concern for retaliation and did not want to put their institution at risk politically. Participant Two informed me that a true fear of regulatory retaliation exists stating that “it’s dangerous for us to put our neck out.” After gathering feedback and working to understand the concerns of those who declined to participate, the researcher eventually developed rapport with a handful of state association leaders, who having understood the purpose of the study, aided in identifying potential participants. The endorsement of the association leaders helped lend credibility to the study and

relieved any concerns of anonymity. A majority of participants interviewed for this study came through these state association endorsements.

Six of the participants have been leaders in proprietary education for over 20 years, three leaders over 30 years, two leaders over 35 years, and two leaders with over 10 years' experience. Several leaders mentioned the importance of their experience including Participant Two who stated "we consider you unqualified to run a school if you have less than 15 years' experience. You know, the school business is more regulated than any that I know of." The group of participants included three women and nine men each holding positions of executive leadership within their respective institutions. To ensure anonymity each participant was randomly assigned a participant number (see Table 3).

**Table 3**

Research Participants

<b>Research Participant</b>	<b>Current Institutional Leadership Role</b>	<b>Participant Gender</b>	<b>Proprietary Education Leadership Experience</b>
Participant One	President/CEO	Male	31 Years
Participant Two	VP Regulatory Compliance	Male	26 Years
Participant Three	CEO	Female	30 Years
Participant Four	President/CEO	Male	35 Years
Participant Five	Provost	Female	20 Years
Participant Six	President	Male	Over 20 Years
Participant Seven	President	Female	25 Years
Participant Eight	President	Male	35 Years
Participant Nine	President	Male	Approximately 10 Years
Participant Ten	President	Male	25 Years
Participant Eleven	President/CEO	Male	28 Years
Participant Twelve	President	Male	13 Years

### **Presentation of Findings**

This section presents the major themes and subthemes that emerged from the post interview qualitative data analysis. During the course of the interviews, seven primary themes emerged and several sub-themes followed. Creswell (2009) suggested that the goal of qualitative researchers is to reach a point of saturation, where adding additional participants to the study will not achieve new perspectives. For a qualitative phenomenological study, Creswell (2009) suggests between 5 to 25 participants. In this particular study, 12 participants proved to be adequate for reaching saturation.

Each of the themes aligns with the primary research question, providing insight into the leaders' perception of the Duncan Regulatory Era along with the key sub-questions regarding the impact of the regulations on both institutions and students, including low-income and minority students. The interviews also provide insight into successful leadership under heightened regulatory scrutiny. The primary themes that emerged are as follows:

Theme One: Call for Regulatory Equity.

Theme Two: Regulations Driven by Ideology.

Theme Three: Regulations Enacted in Politically Charged Environment.

Theme Four: Compliance Creates Critical Resource Strain.

Theme Five: Culture of Compliance.

Theme Six: Regulatory Harm to Students Outweighs the Benefits.

Theme Seven: Particular Impact to Low-Income and Minority Students.

Each of the following sections contain a presentation of the primary themes along with related sub-themes that emerged during the data analysis. In order to illuminate the

perceptions of the participant leaders, quotes and textual descriptions are provided. While telephone interviews have limitations, including the inability for the researcher to pick up on body language and other non-verbal cues, which often prove to be revelatory in nature (Creswell, 2009), the interviews in this study were robust, lasting about 60 minutes on average, and provided ample opportunity for leaders to articulate their perceptions.

### **Theme One: Call for Regulatory Equity**

The primary themes were assigned a random order with the exception of Theme One. This theme was assigned the first spot because it was universally discussed at length by all participants and in most cases, the related concerns were presented with heightened emotional tone. This theme provides insight into the primary question:

What are the perceptions of higher education leaders who worked in proprietary education during the Duncan Regulatory Era?

Without exception, each participant argued that if the Department of Education is acting in good faith, and wishes to help students of higher education, then the Duncan Era regulations, or at least any future regulations, should be applicable to all sectors of higher education, as opposed to exclusively targeting proprietary institutions. Participants universally believe that if the regulations do not prove tenable across all sectors, or at least across all sectors with similar programmatic offerings, then they should be modified, replaced, or abolished.

None of the participants suggested that the federal government not regulate the sector, and a majority agreed that the basic ideas behind the Duncan Era regulations were sound (none, in contrast, expressed any positive or beneficial aspects of the pre-Duncan

Era 90/10 Rule). Participant One was among those who recognized value in the philosophical underpinnings of some of the Duncan Era ideas:

I believe that there were some regulatory ideas that were promulgated during the Duncan Administration within the Department Education that were defensible. Ideas that did make sense if you look at regulation as a mechanism for protecting consumers in higher education and protecting taxpayers. I think there were some ideas that were really defensible, and on the surface, they made sense.

Similarly, Participant Five, specifically citing the stated objectives of the Gainful Employment Rule argued:

We should be able to make good education accessible to students. We should not have tuition costs that are prohibitive to students of lower income. All of that is correct! So, if you have players charging \$80,000 for a baccalaureate degree that end up with a minimum wage salary after they come out, that's just totally wrong! So, you have to make your cost commensurate with the outcomes after they graduate.

Participant One also used the Gainful Employment Rule as an illustration of how he believes that some of the Duncan Era regulations have surface level value:

The idea of gainful employment as a principal it makes total sense. Sure, the idea that, if a student is going to go into debt, and taxpayers are going to subsidize that debt, that upon graduation a material number of those students should have a good chance of being able to pay off that debt, you know, and not be impoverished by doing the work they were trained to do, for which they borrowed the money. Right? That's not a complicated principle.

Regarding Gainful Employment, Participant Five stated:

There's nothing wrong with the ideal of the rule, it just was not implemented equitably. It should have been applied equally to all institutions in higher education, not just one sector; the taxpaying sector versus the tax subsidized sector. I think that it was not implemented correctly due to the fact that it was targeted against for-profits.

Similar to Participant Five, a majority of the participants stated that they embraced regulatory accountability and agreed with the basic premises of the Duncan Era regulations; they expressed that good regulations should apply across all sectors.

Participant Four stated:

What we advocate for is, equity in regulation across all sectors of higher education. We will compare ourselves to [any higher education institution], as long as it's done fairly, and the rules apply to everybody equally, and so we're promoting any policy, or any processes, or anything that helps higher education to improve.

Participant Four argued at a later point in the interview:

But be fair, it's not just one sector that needs to be looked at. It's everybody! That's why I think that title IX is doing a better job than the Duncan Regs, because they are looking at everybody, not just one sector. It's a little bit more equitable! I'm not saying everybody should be punished. I'm just saying everybody should be looked at using the same pair of scales instead of targeting one sector. But the idea, as I said, the idea for Gainful Employment or Borrower to Defense, all of those ideas are correct, but they need a little more thought.

Participant Nine not only expressed his opinion that the regulations should be applied equitably across all sectors, he questioned the wisdom of rolling out the regulations first to the private sector. “So, if I'm a regulator at the federal government, and I want to apply an accountability measure, I would think the place you start is with the school's you're providing direct subsidies to, and or providing tax exemptions to. Not start with the people that are in the private sector. It just didn't make any sense to me.” Several of the participants expressed concerns with the fact that public universities who receive federal funds through Title IV as well as taxpayer subsidies have less oversight than institutions receiving no direct government funds and who are required to pay taxes on their income. Participant Eight asked “why not focus on small private liberal arts colleges whose endowment is being encumbered on an annual basis and who doesn't have enough revenue to do campus improvements? Why not focus on those institutions chartered by the state that are now a drain on the economy?” Participant One echoes these questions stating:

The fact of the matter is that in the in the not-for-profit and public sector, they draw down billions of dollars in Title IV annually for students that never go to class! If you're looking for a way to address misuse of Title IV funds, it's not at El Paso College of HVAC, right? It's not at DeVry, right? Because those institutions are so neurotically focused on compliantly drawing down and distributing Title IV funds because they have to be! When you get a Title IV audit, you can get hammered for being 72 hours late on a \$300-dollar refund, right? If you are, Utah State University, you can draw down millions of dollars in Title IV for students who never attended and just flunk them and keep the money! And that's what

happens across the public sector higher education. A drawdown of Title IV funds for students who never attended and didn't formally withdraw. They have no idea what the last date of attendance was! Maybe they never attended! And they simply just keep the money and put an "F" on a transcript. That could never fly in the for-profit sector!

Participant Four suggested that in the age of big data, it should be obvious who the faltering schools are, and where the regulatory focus should be aimed. Based on his response, it would appear that he perceives the Duncan Era regulatory focus to be arbitrary:

We're in an age of big data. And if your goal is to make good policy and good regulations that benefit the public, that benefit students, then it is in your best interest, it's in everyone's best interest to promote transparency. To understand the data. Measure the things that we're able to measure now and use that data to identify where the outliers are, wherever they may fall. And to understand that if you have program level transparency, which to me includes post-grad earnings, and includes time to completion, total cost those, kind of things. If we can help consumers make better decisions, then higher education is going to improve and your efforts to create policy and regulations won't be as necessary. But that said, when you've got data you can identify outliers. If you want to have good policy. If you want good regulations, they need to address outliers, wherever they may be. And unfortunately, we've had a history of setting parameters around what's good and what's bad without anybody having a clue what the data points are, without truly knowing where the problems are.

Participant Four suggests that the technology and data are available, yet are not being used to determine if the regulatory oversight needs to be in the proprietary, non-profit, or public higher education sectors, or perhaps a combination of all three. Like other participant leaders, he is willing to accept responsibility if the data demonstrates that the problems truly reside in his sector. However, he recommends that all sectors take the same approach, and that regulators follow the data “to address outliers, wherever they may be.”

Most participants when asked if the Duncan Era Regulations have helped students, acknowledged that the transparency, as mentioned by Participant Four, resulting from the required online disclosures enacted in the Duncan Era are valuable to students and prospective students. It is the perception of Participant Three that there exists “improved awareness among students” and that they “are doing a little more due diligence in seeking out College opportunities.” She credited this heightened level of transparency as a positive development from the Duncan Era in that students no longer “sign on the dotted line at the at their first stop.” Participant Seven shared a similar sentiment: “I think it has made them more aware. I hope, that they are much more mindful when they shop around and recognize that they should do more research.” She elaborated by sharing her opinion regarding the transparencies required of proprietary institutions:

That's the one thing I think is helpful, and maybe the other part is also mindfulness of you know, their financial considerations. In general, I'm hopeful it makes students think carefully about the institution that they're looking at. That they're crunching the numbers and looking at outcomes and looking at the

reputation of the institution and what types of employee relationships that they have and job placement. I think that has helped. I'm hopeful that it will help with taking on debt and paying that back and just being smarter about taking on something like this; it is a huge investment! What if you drop out? What if you can't get a job? I'm hoping it's made for a much more educated student consumer moving forward.

While there exists some consensus among the participants regarding the benefit of transparent outcomes, several participants expressed frustration that public and private non-profit institutions are not required to disclose outcomes and therefore are less transparent to prospective students. They point out that a student interested in a Bachelor's in Business Management will find a number of programmatic disclosures listed on the website and enrollment forms at a proprietary institution. Yet if they are also shopping a public or non-profit institution offering the same program, the information contained in the disclosures is not made public. In the words of Participant Two, "you're going to force disclosures on our school, in theory, that the student could use to compare. But the exact same program at a state school does not have to offer any transparency or disclosure. That's kind of problematic." In a frustrated tone, representative of the other participants when speaking about regulatory equity, he stated "you can get an idea of how we feel about the capriciousness of it all." He elaborated:

If you're having to disclose things that not everybody with same program is required to disclose then how is it helping the students to choose? You know, the idea is we want to give them information to help them choose between programs, to choose between schools. But in your market, if you are the only one disclosing,

and the three other public or non-profit schools in your market are not, then you have a problem.

In a similar fashion, Participant One argued:

It's the student that matters, but it matters across higher education. If misrepresentation matters, let's make it matter across all sectors of higher education, right? That would've been my wish. And then there would be some integrity and also some collective accountability. Community colleges would then care about their graduation rates in the same way proprietary schools care. They would care about Gainful Employment in the same way that a proprietary college would care about it, or they would care about repayment, about misrepresentation in the same way that institutions with for-profit tax status would care.

Participant Six also expressed concern for equity, "I think sometimes the regulations that are imposed upon a particular sector assume a one-size-fits-all." He further stated, "I think it's unfortunate when you have imposed a set of regulations on all institutions within a particular industry without any concern about whether there is a need for that to occur or not." While the comments from Participant Six suggest that he agrees with the other participants on equity, he also shared a slightly different take. Having served as a commissioner for a regional accrediting body, his feeling is that the Department of Education, through enactment of the Duncan Era regulations, has overstepped the authority of the accrediting bodies in a way that is not helpful to students. He argued that "the regulators are not as sophisticated about management of institutions as accreditors." For Participant Six, the bottom line was:

Are the students being served? Are they getting a good education? Do the outcomes demonstrate that? And are the resources available to the student to provide the support necessary for them to persist, to graduate, and to fulfill the purpose for why they came to the institution in the first place? The fundamental premise being, if all those boxes are checked, I'm not sure we care that much what happens thereafter. These [Duncan Era] regulations move beyond that. They go after things that are not in [the institution's] control, and therefore have created problems for the sector, and get in the way of us serving students.

He pointed out that the public and private non-profit sectors primarily answer to their accreditors, who in his opinion better understand the inner-workings of higher education (in large part due to administrators serving as commissioners and site visitors) and that no extra federal regulatory oversight is required for their operations. While his concern is also based upon equity across sectors, Participant Six differs from the other participants in his argument. Rather than requiring federal oversight across all sectors, the tradition of deferring to the institution's accrediting agency as the arbiter of institutional quality should be applied, according to Participant Six, to the proprietary education sector as it is in the other higher education sectors. This would be in contrast to the current regulatory climate where proprietary institutions answer to their accreditor and a unique subset of federal regulations including those enacted in the Duncan Era. He argued "If this is good enough for the total higher education Gander. Why is it not good enough for the for-profit sector?" Citing the benefit of oversight by regional accreditors, he argued:

You should have each school be evaluated on their own merit. This is how the regional accreditors do it. They don't compare us to Columbia, which is in the

same region, or Princeton. They evaluate us based on our own mission. You can't standardize a college education because it's so different in each institution. It's different if you're a faith-based institution. They have completely different missions. Are you going to evaluate them the same way you evaluate us? No! And the regional accreditors recognize this. And that's my issue with federal regulators. You can't have standardized regulations! Everybody should get individualized supervision!

Using his own institution as an example, he points out:

We have NCLEX (National Council Licensure Examination) results for nursing education. And in the state of *STATE OMMITED* we are the largest provider of bachelors prepared nurses in the state, and I would like to think that that would matter more than our tax status. Why not hold us all equally accountable? If our graduate outcomes can compete with the large state schools, and some of the prestigious non-profits, then why do we have regulations that, you know, only apply to proprietary education? In many other countries, higher education is not as parceled.

Other participants pointed out the difficulty of requiring all institutions to fall under the same regulatory umbrella. Participant Ten for example stated that proponents of federal regulation of proprietary education, “always compare for-profit versus public as a whole and non-profit as a whole” which he believes is “in an inappropriate comparison.” He elaborates by stating:

The public higher ed sector as a whole includes all the elite research institutions, which skew the data. If you do two-year for-profit versus two-year public, you

discover that default rates are the same, and in fact, graduation rates are much better in the for-profit sector. Earnings are better in the for-profit sector, and the debt and repayment rates are better. Similarly, if you did four-year proprietary versus four-year nonprofit, the data looks very good. However, when they do a simple straight calculation of not-for-profit versus for-profit, the not-for-profit includes the elites like Harvard and Yale. And of course, these schools just skew the data, you know. Also, the elites in the public sector, all the state flagships, skew the data too much. But no one really wants to note that right? So, when you put DeVry University up against a typical state school, it's fine. But when you add in University of Michigan, UCLA, you know, the elites, they skew the data too much.

While several of the participants expressed concern about the regulatory data used to justify some of the Duncan Era regulations in somewhat of an “apples to oranges” comparison, they likewise perceived the lack of “apples to apples” comparisons across sectors as problematic. A small majority of those interviewed cited specific examples of institutions serving similar student demographics and offering similar programs as their own. In all cases, the participant leaders stated that the institutions cited were underperforming and yet due to their sector classification, were not in danger of regulatory sanctions. For example, Participant 10, who during the course of the interview stated that the institution he leads “graduates the most black and Latino students in the entire state” compared his institution to a reputable historically black college who he argued serves a similar student demographic.

Okay, so if [we] were to compete against [institution omitted], just pull up our debt-to-earnings versus [institution omitted] and you'll see there is no comparison. A student would be banned from going to [our] program because the debt is too high for the earnings. But they would let them go to [institution omitted] where they're going to get doubly screwed; the debt is double! Good public policy, right? Really Duncan? You're really meaning to do this? And the way Gainful Employment works is if you failed it on your website, you had to refer them to other nearby colleges, even if graduation rates were lower, debt was higher, and earnings were lower. And that's when I started realizing, like the whole thing, was just a you know, basically Wizard of Oz. There was nothing behind it. And there is nothing behind it now.

Another common theme among the participants was the frustration of large, reputable schools which have made mistakes yet remain standing while several proprietary institutions, whom they perceive as making less egregious errors, are now shut down. Participant one expressed concern over:

Louisville interstate wire fraud. You look at Baylor University vicious Title IX failures in rape cover-ups. You look at North Carolina, they created an entire department. It was fraudulent. Those kinds of things should be death sentences. None of those institutions have had any accountability of any kind.

Participant Five similarly stated:

If the same thing happened to us, the same thing with something like the UNC Chapel Hill incident where you have the African studies program that had fake courses and fake programs for 10 years. But God forbid it's a Corinthian College

or an Everest or something. You'll have it repeated all over the media! Yeah, the problem here is the perception. The perception is that we are all really bad seeds. It's not true. We've got bad apples in every sector. Unfortunately, we get the feathers and tar.

This observation of “bad seeds” was among the subthemes associated with equitable regulatory accountability. The participant leaders perceived that “bad actors” within the proprietary education sector contributed to the advent of the Duncan Era Regulations. Participant Seven for example stated “So when you talk about the good players the bad players, I think regulations were needed.” Participant Four similarly stated “I think there were a handful of entities that were too aggressive with marketing. I mean there was a little bit of a wild west thing going on and so there was some scrutiny that was a direct result.” Participant Five noted,

So they, the Obama Administration, were getting worried. And I think what happened was they put some people in power to do a public relations campaign against the for-profits. And some schools deserved it. Okay, so there may have been some bad actors taking advantage of Title IV opportunities.

While most participant leaders acknowledged that bad actors existed within the sector, they were not all in agreement that the regulations were the correct response. Participant Eight argued: “Those federal regulations in my view were knee jerk reactions made as result of some bad actors, some bad owners in the for-profit sector.” Participant Twelve pointed out that there is no standard definition of a “bad actor” or “predatory school” and argued that it was inflammatory language that was regularly used without any true definition:

First off, I'd like to understand the definition of predatory. You know, that seems to be a word they use a lot, but I don't I don't know what that means. I'm not sure anybody really knows what that means. If it's a bad actor that's doing illegal stuff, I don't think anybody's going to be supportive of that institution. Right?

Participant Seven stated “We know there are bad players. We can tell you who they are! Frankly, EDMC definitely wasn't one of them nor was DeVry.” He went on to say “some institutions were bad players but most were not bad players at all” suggesting, like other participant leaders that sector wide regulations may not have been the appropriate response to a minority of institutions with problems.

Inequity of regulatory standards was a clear theme that emerged from the participant leaders' feedback. Although there was some disagreement as to whether the regulations should be applied to all sectors, or that all sectors should be taken into consideration thereby illuminating weaknesses in the constructs of the Duncan Era regulations, it was clear that all participants were making calls for regulatory equity. No leader advocated for a scenario where there was no federal oversight of proprietary education; most in fact, acknowledged the need for accountability. What constitutes an equitable and proper accountability structure is a question that the participant leaders wish to further explore with the United States Department of Education. Participant Five plead, “We need to have more voices present at the hearings; this is a democracy. But they usually only have one, the guy, Shireman, or whatever his name is. The one who goes from state to state trying to raise problems.”

**Theme Two: Regulations Driven by Ideology**

The name Shireman is one that regularly came up during the participant interviews. Robert (Bob) Shireman, has written extensively on the proprietary education sector and is referenced frequently in Chapter Three both as a contributor to the general body of literature and as a Duncan Appointee to Deputy Undersecretary. Shireman was instrumental in implementing the Federal Direct Loan Program (FDLP) as a component of the Health Care and Education Reconciliation Act. Shireman also played a lead role in the resulting Duncan Era regulatory reforms. As of the writing of this study, Shireman is currently active at various state levels via the Century Foundation seeking to reinstitute and amplify regulatory elements of the Duncan Era and the 90/10 Rule.

The participant comments that comprise this theme provide additional insight into the primary research question:

What are the perceptions of higher education leaders who worked in proprietary education during the Duncan Regulatory Era?

Theme Two also adds insight into the following key sub-questions:

- How do proprietary education leaders describe the Duncan Regulatory Era's impact on the operations of their institution?
- Do proprietary education leaders perceive Duncan Era policies as beneficial to students?

As noted in Theme One, most participant leaders support the general ideas behind the Duncan regulations. However, all participants universally expressed concern over the implementation of the regulations including how they were written. It is perceived by most participants that the regulations were written from an ideological standpoint, an

ideology believed by the participants to be shared by Shireman and his colleagues.

Participant Four expressed his belief that the Duncan regulations were driven by “certainly ideologies. I think there was a move for government to take over health care. I think that was their big focus and then as a result, they had some appointments that had the same idea for education.” Participant Nine, speaking of the Duncan Regulatory Era expressed “I think part of it was ideologically driven for sure.” He continued “I think there was a genuine ideological perspective from members of the previous administration that was skeptical of the whole concept of the for-profit college industry.” Participant Six shared his perception that “there is a growing drumbeat towards a more socialistic approach towards our public governance, you know, anything that is for profit would be looked at with scrutiny.” Similarly, Participant Eleven expressed his belief that “We’re moving from free enterprise to socialism and the advent of these regulations were a subset of this movement.” He also stated “this country was founded on the principles of individualism and free enterprise. However, this seems to have been forgotten or perhaps never understood by those making these regulations.”

It was the perception of Participant One that the ideology did not necessarily derive from Secretary Duncan, but rather from certain underlings within the Department.

He stated:

I have some insights into the process, and other people can corroborate what I'm saying. I think there were individuals in the department who actually took advantage of Secretary Duncan in terms of installing within the regulatory regime, a regulatory process that the secretary himself wasn't even aware of until it was already there and being promulgated. So, I think that the department got hijacked

by folks who had a very ideologically driven agenda which was that they did not believe that there was a place in education for institutions with a for profit tax status.

As outlined in the Chapter Two Literature review, Secretary Duncan did formally deny that his signing off on the Duncan Era Regulations were done from an ideological standpoint. This statement can be found in Appendix C.

Participant Seven recounts that she was present during some of the early discussions when bureaucrats within the United States Department of Education were first discussing heightened regulation of the proprietary education sector. She recalled:

I was in meetings with the Department of Ed people during that time. And the way they spoke about the for-profits in 2013 and 2014 was just atrocious. They were bashing them right and left and saying that ‘we’re going to get them.’ These were Department officials! Department officials were actually saying that their whole intent was to get rid of ‘those for- profits.’

Claiming to witness a similar phenomenon, Participant One shared his perceptions of the architects of the Duncan Era regulations stating that the initial aim:

...was just shocking! Stunning to me! That that the folks who promulgated the regulations actually didn’t care. It was so blatantly, transparently, ideological that it shocked me! You know, I would have thought that they would have put a little bit more intellectual rigor into the argument just so that they didn’t look like total ideologs.

To offer evidence of this claim, Participant One pointed out that: “They actually went so far as to carve out public and not for profits from the regulatory language. Why the hell

would you do that if you believe the principle matters?" Similar to previous statements made regarding equity in Theme One, this participant expressed a belief that if a particular regulation is helpful, it should be applied to all institutions.

If you look at the Duncan Administration, I thought they had some great ideas in terms of accountability; things that would matter for taxpayers. Things that would matter for students. But they were so blatantly ideological that they just torpedoed any integrity that the process would have because they've eliminated public and not-for-profits from accountability; about 90% of all institutions where students actually go. Right? Because at any given point over the last 10 years, maybe 10% of all students have attended institutions with for-profit tax status. So, when you put in a regulatory regime that doesn't address where 90% of the students go, on its face it just seems wrong.

Other participants not only expressed concern for ideologically driven policy, but argued that the consequences of such policy approaches have in the case of proprietary education resulted in what they perceive to be catastrophic outcomes. Using the closure of ITT Technical Institute as an example Participant One suggested:

So, if you have concerns about marketing, concerns about placement, then you approach the institution, you share your concerns with them. You ask them to alleviate your concerns, right? But what they did was immediately went to a death sentence letter of credit. That is what you only do if your objective is to shut the place down, right? And you've already decided, we don't care if we put tens of thousands of students on the street. We don't care if we put, you know, thousands of employees on the street. We don't care if we devalue the degrees that have been

earned for half a century from that institution by making it go away. You only take that approach if your objective to begin with is a death sentence, right? So that's, I think an example of where the ideology became really damaging. You know that you would literally be willing to put tens of thousands of people on the street and we're talking there were students who were months away from graduating. Weeks away from graduating, from getting the credential and going to work and they lost it all. So, for me, I had a hard time wrapping my head around how, I don't know what the word is. I had a hard time wrapping my head around how, extremist a person had to be in their views to think that was a good outcome, right?

Participant Twelve expressed a similar view and used Corinthian Colleges as an example stating:

There could have been a resolution to that. I admit Corinthian was a little arrogant, but along the way there needs to be a better solution than just shut the school down. That club over the head just doesn't benefit anybody, especially the student. You know, they're still trying to clean up that mess. Yeah, it clearly was the wrong path way.

Participant Two recalled the negotiated rule making during the Duncan Era, a time he remembered as difficult for the proprietary education sector:

And as I think about those times that we were getting hammered by the Department and others. It was like okay, you know, we're doing some of the most honorable work you can do. You know, we're being called scumbags, thieves, and liars on a daily basis. And it provided some interesting perspective to see the bias

of people that would prefer to have government-run education; antithetical to the thesis of the country.

Speaking of proprietary education detractors, particularly those with regulatory power and influence, Participant Three expressed a desire for them to visit the campuses of those institutions they are seeking to regulate in order to be more informed. In her mind, such on-site visits would include “direct involvement and engagement” with students, in the way that regional accreditors do “versus believing what you read or using your personal ideology to drive your policy.” In failing to follow historical accreditation methods to gather institutional data, it is her belief that regulators are “doing such a disservice to students across the United States.”

### **Theme Three: Regulations Enacted in Politically Charged Environment**

While politics and ideology are often indistinguishable, an analysis of the participant interview data warrants a delineation between the two. The data collected from this particular theme provide insights into the primary research question:

What are the perceptions of higher education leaders who worked in proprietary education during the Duncan Regulatory Era?

The following key sub-questions are also addressed through Theme Three:

- How do proprietary education leaders describe the Duncan Regulatory Era’s impact on the operations of their institution?
- Do proprietary education leaders perceive Duncan Era policies as beneficial to students?

During the interviews, most participants discussed ideology as a driving force for the architects, including Bob Shireman who designed the Duncan Era regulations,

however there was also considerable discussion regarding the political opportunity provided to other members of the Administrative Branch including the President, congressional members, and various state level politicians such as Attorney's General. An additional, yet related, political sub-theme, as will be demonstrated, included the politics of higher education, where several of the participants believed that traditional colleges and universities sought to limit the growth of proprietary institutions. The participants also noted that opponents and proponents of proprietary education generally follow partisan lines. Participant Seven, a registered Democrat, lamented this fact stating, "it really has been the whole back and forth between Republicans and Democrats and the whole bipartisan issue and they have to stop that right away." Speaking on the partisan divide, Participant Two, a Republican, asked, "where is the incentive? It's in getting re-elected, or elected in the first place" suggesting that proprietary education is among the defining factors of partisan politics in America. Participant Four went as far as suggesting that perhaps some of the proprietary school closures were political gestures and the impact to students would serve as a useful political illustration for opponents of the sector:

In their zeal to try to shut down, or stop the institutions that they perceived as bad actors, it was all done without any regard for the best interests of the students attending those institutions. In fact, I believe the thinking may have been, the more pain and harm caused to students that went to those institutions, the better it serves their long-term goals to try to keep for-profit schools out of higher education.

Participant Six was among those who shared a similar sentiment stating that just as in other regulated industries, once a sufficient problem has been established, even one that may have been exacerbated by regulators that,

Regulation would sort of come galloping into the proverbial rescue. And in this case, the rescuers painted with a brush that was so broad that it didn't discriminate against those who are actually compliant and operating with the best of intentions and outcomes versus those who deserved to have some sort of intervention.

In other words, several of the participants believe that as a problem arises, regulations are put in place which amplify the problem which in turn leads to more regulation which creates a cycle that results in closure rather than continuous improvement. Participant Nine used ITT as an example of how he believes this cycle works:

I would make the case, that that the ITT closure specifically was driven by the administration. It was a closure that did not have to happen. ITT put multiple options on the table to try to save that institution. All were declined. They consistently met letters of credit that the administration kept putting on them. And every time they would meet a letter of credit, the administration would just raise the level, and to the point that then, when they raised the letter of credit to such a degree, and then at the same time, they said we're not going to allow the title IV anymore, it basically tied ITT's hands to the point that they literally had no option but to close.

Participant Seven also perceived the mass location closures as partisan and expressed frustration saying “I'm a Democrat, but I was just like what the hell are you guys doing? I

was like, what is this? Come on?" She went on to call the proceedings a political witch hunt where students were harmed in the crossfire:

I'll say during the witch hunts because it was, I think a lot of these candidates during the time when they were running for office, or in those years just used it as another political talking point. The politicians were saying 'hey, I can talk about this, it will really get people going. So, I'm really going to capitalize on this for-profit thing and how they're all predatory. How they're all bad.'

It was also her perception that the media played a role in the politics of proprietary education:

I just feel like between the political issues and the media frenzy that it all just kept fueling the fire. I would just hope that this would never happen again. That's probably a fantasy of mine, but I think that it really harmed people. It also harmed institutions when sometimes there wasn't anything that bad going on. It harmed some of the good players! I feel like we could we learn some lessons from the Duncan Adventure, or whatever we want to call that. I felt like this became more of a political game than anything else.

Participant Eleven argued that:

It is clear to me that the Duncan Regs as you call them and even the regulations that predate Duncan are purely political. I say this because every time we present to lawmakers, whether it is in Washington or here in STATE OMMITTED, we tell them that we can go along with any regulations, but we want to see them applied to all sectors. But this is always a non-starter. The conversation always dead ends at that point.

Participant Eleven elaborated on this point by sharing:

In my mind, there is nothing inherently virtuous about a public or non-profit institution. When people are in charge, there is always opportunity, always room for corruption. There is no shortage of scandals across all sectors of higher education. So, in my mind if a regulation prevents some type of abuse, it should be valuable for all sectors. There are plenty of regulations like Title IX that apply to everyone and its clear to me that when these types of regs are put in place, that those behind them actually want to solve a particular problem. But time after time it becomes clear that when it comes to us, they're only interested in slowing the for-profits; not helping students, because if that were the case, then they would be committed to removing regs that impede college access, removing regs that make it impossible for us to service students in the best way. But really, they just want to slow the sector, not help students. That sounds harsh, but having gone the rounds for so many years, its hard to see it in any other way. Any other way but politics.

Participant Three suggested that one way to mitigate the politics involved is to have policy makers visit an institution and see first-hand what the institutions are offering:

If I'm a regulator, or a politician, I've got a visit the school. If I talk directly to students in the environment, attend a graduation, I'll have a clear idea what's actually going on. But the reality is they're sitting somewhere else making judgments about something they know nothing about.

Another area where leaders perceived politics to be at play was through a handful of private non-profit institutions, who according to several of the participants, became concerned about the growth of the proprietary education sector, particularly with institutions offering competing programs. A subtheme among the participant leaders suggests that participants perceive lobbyists from certain private non-profit institutions were championing the Duncan Era regulations in order to reduce competition, and eliminate programs offered by large online proprietary institutions. Participant Three described this as the “Advent of opportunity to reach students where they are” during which time most traditional universities were not yet equipped to offer online courses. Participant Four referred to this era as one of “extreme growth of for-profit education” in part because proprietary institutions were the first to adopt online learning. He perceived that there grew among the traditional institutions “a desire to protect the market share.” Participant Nine noted the unusual growth in the proprietary sector as a result of “predominately online” education:

They grew, and they started coming into some of the same fields, or the same academic majors as some of the traditional colleges. And I think that put some pressure on the traditional sectors, pressure that wasn't felt before when the for-profits were just career-based schools doing welding and stuff like that. And now these online players were, I guess, stepping onto the turf of the traditional schools and getting a larger piece of the Title IV pie. And so, I think that kind of caused some of the ‘traditionals’ to start leaning harder against the sector.

Participant Seven, speaking of the private non-profit institutions during this period stated:

I think they were just so unhappy with how much Title IV was going to the for-profits during that time. It ultimately lead to serious pressure from the big guys. Institutions that were nonprofit were pressuring the Department of Ed. A lot of external noise was coming into the Department from the nonprofit schools. This along with the ideological pressure from department employees, along with news of a few bad actors. It did seem like there was a perfect storm.

Other leaders pointed out that many of the non-profit and public institutions have now begun targeting adult and non-traditional learners. While none argued that this is necessarily a bad thing, as it expands educational opportunity, they expressed frustration that the tactics employed by these institutions to attract new students are the same ones that were once described as predatory when used by the proprietary sector. Participant Ten, shared his belief that radio ads used by Syracuse University and Arizona State University would result in regulatory sanctions if used by a proprietary institution. As an example, he paraphrased some of the statements such as “Are you interested in getting out of your dead-end job?” and “Build up your career by enrolling in Syracuse University.” Participant Twelve shared his perception that the amount of marketing formerly spent by proprietary institutions was a talking point used to categorize them as predatory. He stated:

Does the fact that an institution actually advertises a problem? Does that make them predatory? If so, I'd point to Harvard Extension School or Southern New Hampshire University or several other upper-echelon institutions and ask them what their real marketing budget is. Southern New Hampshire is spending one hundred and forty-nine million dollars a year. Is that the definition of predatory?

None of the participant leaders necessarily faulted the non-profit and public universities for their advertising campaigns, rather they perceived the disparity in regulatory oversight to be troubling and of a political nature.

An additional sub-theme related to the political environment at the time was the belief among several leader participants that Bob Shireman, or possibly other employees of the United States Department of Education under Secretary Duncan, purposefully leaked information about the forthcoming Duncan Era regulations to Wall Street short sellers. It is the perception of several participant leaders that the purpose of these leaks was to drive the stock prices of publicly traded educational institutions down, thereby devaluing the organizations. It is also the perception of some of the participants that these short sellers profited from the devaluation of large institutions in the sector. Participant Two summed up his perception of the origin of the Duncan Regulations by stating, “Short sellers and politics. It’s where the incentive was.” Participant One elaborated by stating:

Shireman had conversations with individuals who were trying to manipulate the market who were short sellers. These were individuals who wanted the stock to decline in the sector in order to profit. Shireman shared information with them that he did not share with others. That's incontrovertible. I think his motivation was trying to hurt the industry. He was trying to bring it down and the short sellers were an avenue to do that. Because if you can if you can kill the market, then you can kill the industry.

None of the leaders suggested that Shireman or other Department employees profited personally from leaking information or from short-selling, rather this was used as an

opportunity to injure the proprietary education sector. Participant Two shared his perception stating:

Through Freedom of Information Act requests to the Department and others, we found out that one of the biggest influences on the Duncan Era regulatory framework were hedge funds with short positions in the big publicly traded companies. The biggest donors were the hedge funds with short positions in the University of Phoenix and others. So, the people influencing the media about the negative sentiment towards our sector, the people making the comments, and on record talking to the department about the policies, were the short sellers.

While expressing concern over the interactions of Wall Street and the federal government, it was difficult for the participant leaders, when pressed further, to conclude whether or not these actions constituted a crime. Participant One shared his opinion: “Did he [Shireman] financially benefit? I don't believe there's any reason or any evidence to suggest that. I've never seen any evidence of that.” Most participants who raised this issue admitted that while they suspected something was not right with this type of communication, it was not in their purview to conclusively argue that insider trading laws were violated. Participant One continued:

I just think he engaged in conversations and he provided information. He sent it to folks with an agenda to hurt the industry. But he did not provide to others. He may have provided information that was quote “inside information.”

Regardless of the legality of these transactions, several of the participants viewed this particular sub-theme as another layer of politics employed during the Duncan Regulatory Era. At the very least, concern over the appropriateness of these particular

practices employed to influence policy was expressed among those who claim to have knowledge of these dealings.

Finally, many of the participants expressed their belief that the perception of the sector that arose during the Duncan Era regulatory debates has made operating institutions more difficult. In part, fewer adult students, once a staple of the sector, are interested in attending institutions with the label for-profit and are opting for non-profit options such as Southern New Hampshire University and public schools who are now catering to working adults such as Arizona State and Wester Governors University.

Participant One state that this experience has been:

More psychological than physical. I think that the sense of despair in the industry from being under attack, you know, unrelenting attack day after day, week after week, month after month for a good eight to 10 years. This really just wiped out the sector. I think it had an impact on enrollment. You know, if you're if you're being attacked in the media every day, and by the way, that was also a big part of the Duncan era regulatory regime wasn't just to come up with regulations and promulgate them, but to actually openly attack, using news conferences, articles, and interviews to coordinate with their introduction of the regulations. This never happened before with State Attorneys General, right? On lawsuits. It was such an intense attack against the industry that I think that probably impacted us more than the cost of regulatory compliance. Just cut to the core, I think what happened was it resulted in what it was supposed to result in. Which was a huge shrinking of the sector and it resulted in students more and more making decisions not to enroll in institutions that happen to have a for profit tax status.

Participant Eleven expressed that as a result of the change in public perception, “it is very hard to attract people to the industry.” Participant Three also noted that

What happened Prior to the Duncan Era, there was a wider acceptance of career colleges and a discussion around the value and a direct pathway for students to move into a career. I would say it nearly destroyed us entirely. It definitely annihilated parts of us and not necessarily as a direct result of the regulations themselves, but rather the attack that you know sort of was an outgrowth of the era.

#### **Theme Four: Compliance Creates Critical Resource Strain**

A fourth theme that emerged was the expenditure of institutional resources in order to meet the heightened regulatory requirements of the Duncan and post Duncan Era. This theme provides insight into the primary research question:

What are the perceptions of proprietary higher education leaders who worked in proprietary education during the Duncan Regulatory Era?

Theme Four also aids in answering the following key sub-questions:

- How do proprietary education leaders describe the Duncan Regulatory Era’s impact on the operations of their institution?
- Do proprietary education leaders perceive that the Duncan Era policies benefit students?

Participants expressed frustration regarding the increased portion of their budget required for regulatory compliance. It was expressed that these dollars could be better applied to technology or other student development initiatives. In part, the difficulty derives from an institution’s ability to properly interpret the regulations. Participant Two observed

“the only area of US law that is more verbose than higher ed is the IRS tax code. Is it not healthcare, not banking, not pharmaceutical; nope, it's higher ed.” He elaborated by stating:

So, the other conundrum during the Duncan Era was the rules were changing all the time. Every six months there was a new rule coming out and some of it was rules just written by executive pen. The whole student loan institution was closed down overnight. And a lot of that was just executive ink. So, trying to stay flexible enough to address all that is very, very difficult.

Not only did participants express a belief that the regulations were ambiguous or capricious at times, they also, as Participant Number Five argued, believe, “The Duncan Regulations are expensive to comply with.” Participant Two quantified the expense for his institution stating “We probably spend 30% of our revenue making the government happy.” Compliance, according to the participants creates a strain on monetary resources and campus budgets require a significant investment in people, process, and technology in order to demonstrate compliance.

Participant One pointed out that:

Institutions with a for-profit tax status have to spend significant amounts of effort and money just tracking drawdowns, distributions, and returns down to the dollar, right? And they have to track, you know, LDA's (Last Date of Attendance) to the day. And then they have to ensure that the returns took place within a certain deadline after LDA was determined. None of that happens in the public sector, right? They don't even track it! So, if you talk about ways in which the Duncan

Era Regulations have affected higher education in the for-profit sector, I think one clear area is just the expense.

Similarly, Participant Five complained:

You need the staff, resources, the training, and everything else to comply with all these regulations. You have to make significant program changes. On one hand, you have to reduce the cost to the students. On the other hand, you have to increase faculty training, staff training, and everything else. These changes impact your bottom line.

But despite this complaint, Participant Five, like the other leaders, was resigned to the fact that compliance is a matter of survival. “But of course, if you are focused on the bottom line and not looking at the fact that you want to survive, not only for this quarter, but also for the next 10 years, then you have a problem in today’s regulatory environment.” The commitment of such resources is in the minds of participants a requirement to remain operational. Participant Two mentioned that his institution was quick to adopt this attitude

Because in the Duncan Era, it was so life and death if you screwed up your regulatory stuff. You couldn't just pass it off to a compliance officer. Everybody that did is now closed. You know, compliance is now executive cabinet time.

However essential regulatory compliance is for continued operations, Participant One, pointed out that high quality compliance is particularly hard for smaller institutions who may not have the budgetary capacity to meet heightened regulatory demands. It is his perception that “welding schools or small HVAC schools with a few hundred students” are hurting the most. He argued,

It's almost impossible for those institutions to be compliant on a daily basis, regardless of intent, because the demands of compliance are so vast and taxing. When you consider the requirements as a percentage of revenue, it is almost impossible for a small school to be compliant.

Participant One consents however that this can be true even for institutions that are not required to comply with the Duncan Regulations.

I'm not just talking in the sector, I'm talking across all of higher education, the same thing applies to you know, a small 400 student liberal arts college in Minnesota, you know, they do not have the resources to address Title Nine in the way that, say the University of California system does; they can't do it. And so, there is some level of fairly material non-compliance right now today as we're having this interview. Not because of lack of intent. Not because of malfeasance. But because the regulatory oversight demands are so overwhelming. It takes a certain level of scale, pretty significant scale, you know before an institution even has a hope of obtaining the necessary resources to do it completely.

As stated earlier, another component of compliant leadership that participants perceive to be challenging is the required reduction in programmatic cost. Participant Six mentioned that his institution "had to be very careful about whether our program offerings are even worth pursuing because we don't think that we're going to meet the gainful employment expectations." Similarly, Participant Four described that his institution, from a revenue standpoint, has had to make sacrifices in order to meet certain regulatory criteria:

We have taken short-term hits on our medical assisting programs for example, that was one of our riskiest programs under gainful employment. We dropped the

price 20%, we didn't increase it. We increased the scholarships. We worked to get that program through the wormhole and we actually passed the gainful employment metrics.

Several of the participants lamented the fact that they no longer used measures such as job market demand, future graduate career growth, the ability to build upon credentials with more advanced programmatic offerings, and a number of former considerations when determining which programs to offer. Many of them, like Participant Four, first make the determination if a program meets the Gainful Employment Standard prior to creating a new program offering. This, it is argued by participants, is a flawed approach given that it only allows for the immediate earnings after graduation and not the potential career earnings over time.

Participant Two summarized the budgetary challenges associated with compliance by stating:

It's hard to do anything other than play defense. We didn't have the time or budget to spend on launching new programs, to get better outcomes, because we're so busy trying to stay ahead of all the other stuff. It's not easy! None of our systems provide the data that the government wants. So just the data exports and reconfigurations alone are a nightmare! Then you've got to figure out how to build a system so that students can enroll without being pressured by a salesperson. And now you can't do a self-enrollment process because you have to hand deliver a form. So, trying to operationalize the regs and stay ahead of them, and make sure that, all the ducks are lined up, prevents you from running a school. You can't do anything to make it better or grow.

Participant Five argued that these types of challenges,

Indirectly impact the students in terms of their college dealing with compliance, rules, and regulations that are too cumbersome to adhere to. Or, the students suffer because their college has spent so much money on compliance that they don't have the money to actually run operations. This is a negative impact in terms of the student being left high and dry.

Similarly, Participant One stated that his institution during the first few years of the Duncan Era “probably spent 30 million dollars a year on compliance and legal fees and third parties for audits and etc. That's 30 million dollars that doesn't go to new computers, doesn't go to instructors, doesn't go to professional development, doesn't go to the bottom line, right?”

### **Theme Five: Culture of Compliance**

Despite the frustration expressed by the participant leaders about how burdensome regulatory compliance has become as a result of the Duncan Era, all participants universally stated that compliance must be second nature for leaders in the sector. The term “Culture of Compliance” was used by eight of the twelve participants, suggesting that it may be an industry buzz phrase. Yet, the term did not appear to be one that was thrown around lightly by the participants. Second to the theme of regulatory equity, a culture of compliance was the densest theme in the study. It aids in answering the key sub-question:

- What should future leadership approaches to regulatory compliance under conditions of heightened oversight look like?

In discussing the regulatory role of institutional leaders, Participant Twelve shared his opinion of what is important for leadership in a heightened regulatory climate:

A leader really has to make decisions based on what is best for the student.

Leaders in Higher Ed will always say that, but the fact of the matter is, so many are steeped in archaic policies and procedures that it's really an imperious relationship between the institution and their students. You see it every day. One size doesn't fit all any longer.

He went on to share that for his institution putting the student first is “the way that we have over the last several years survived; and not only survived but thrived!” Participant Six argued that student centric leadership must be more than simply following a set of regulatory guidelines. In describing her own approach, she stated:

I love to see students who, perhaps are coming from a perspective where they wouldn't have opportunities in life were it not for education. And when they were given those opportunities, actually flourished. And to me that is perhaps one of the most exciting things that I could witness and be participating in. Is to watch students who make that journey.

Participant Eight spoke of his current institution boasting, “We provide more student support and more student services and focus on a greater commitment to student success than any University I've ever been with previously and we would do that regardless of federal regulations.” Participant Six argued that, “All Institutions talk about student centricity. But when you start peeling the onion you get the difference loud and clear between those who live it and those who talk about it.” She elaborated by stating:

I think the student centricity has got to be in the DNA of the institution. And what that means is, the way we have defined it here, I think is also critically important because, I think it's a mistake to look at the student as a customer from the perspective of, give the customer what they want. You know, our approach is they have come to our institution to partner with us to actively participate in an active learning environment. To identify the knowledge the skills the behaviors and ultimately gain the competencies that are going to help them to be successful.

Participant Six went on to say about higher education leaders, “if their true passion is about students and helping them, it’s almost hard not to be successful.” This statement was fairly representative of the comments of the other participant leaders. Without exception, each leader spoke at length about putting students ahead of profits.

Participant Three argued, “if you don't deeply care about every single student who attends your institution, you're in the wrong place.” The leader participants each pointed out that a culture of compliance is among the ways in which institutions take care of their students. Despite the resource strains and budgetary challenges, heretofore discussed, a majority of the participants argued that it is imperative to avoid entanglements with regulatory troubles and the impact that such challenges have on students. Participant Twelve spoke in depth about the importance of ensuring that regulatory compliance is saturated throughout an institution of higher education:

My first area of focus is the culture of the organization. Now some people's eyes my glaze over when I use the word culture. It is unfortunately overused and perhaps a bit abused these days. But if I but if I just change out that word and replace it with “behaviors”, which culture is nothing more than behaviors, I am

able to really focus on organizational quality. When discussing behaviors, I don't mean some mission statement that is hung on a wall that nobody can remember. I need to know what the true behaviors are, how they work within the organization. And most importantly what are the behavioral exchanges with students! I think that is the centerpiece of any good higher ed institution.

Participant Three spoke enthusiastically about how she personally ensures that compliance is central to each of her institution's functional departments:

In instilling a culture of compliance throughout the organization, I love to do the training myself and I will say that during times of rapid growth when we were opening, you know, three to five campuses a year. I made sure that I was present at least monthly so that they understood my drive, my focus, my reason for being, and our college's sole purpose is about providing a quality education. So, our students find themselves in the career that they came to us for and there's really nothing else that we do that's more important.

She continued by sharing her efforts beyond training:

Not only have I done training, whether it's on accreditation or compliance, but I have those discussions face to face, one-on-one whenever I'm at a campus. I make sure I sit out in the cubicles, rather than lock myself in an office, so I can hear what our admissions team is saying. I always follow up and go in and have a conversation whether it's after a phone call or an interview. I want to be sure that they hear it directly from me and understand how critically important compliance is to me. We have a zero-tolerance policy for non-compliance and

misrepresentation. There is no excuse for not providing honest information for students at every turn.

Similarly, Participant Nine expressed the importance of having top leadership highly involved and tuned into all matters of regulatory compliance:

My advice would be a to make sure that they keep this as a primary component of their job duty. Carve out whatever time each day, each week, whatever it is, to make sure that you're staying on top of systems, whether that's you know, being part of a state Association, hiring a lobbyist, or having an office in your school dedicated to compliance. Leaders in the sector have to make sure they fully understand that legal and regulatory compliance matters. And they have to dedicate resources, time, and staff to make sure that is a key component of your operation. Schools are focused on enrollments and admissions and stuff like that, which is understandable. But not keeping an eye on compliance will come back to bite them.

Participant Two expressed his belief that compliant leadership requires a careful inventory of every single college staff and faculty member. He stated “we're going to make sure that we focus on who we hire and who stays here. And we're only hiring the people that are like minded. We're very, very, very specific about that.” Participant Six also emphasized the importance of having a compliance minded staff and faculty. “Our staff come to work every day knowing it is our job to help students be successful. Meaning that all of those outcomes that we aspire to, are largely achieved simply by showing up with the right intentions.” Participant Twelve made it clear that for his

institution “the regulatory piece is non-negotiable.” He shared one way that they work toward regulatory compliance:

We actually have a group of people that shepherd the integrity of our culture. It’s not simply a couple of executives. We assign ambassadors. And there’s at least one Ambassador that represent their department. They hold Ambassador meetings, designed for formal brainstorming and cultural reinforcement. This ensures that we are constantly reminded of our culture of compliance. This is among the ways we build top of mind awareness.

Similarly, Participant One noted that “There should be people in the organization who are experts who are empowered to make sure that the organization operates in a compliant manner.”

Participant Eight feels that his institution has remained successful in navigating the heightened regulatory environment because they understand what is expected from a compliance standpoint and they work to adhere to it:

If a university can do what it says it’s going to do and we as leaders can support that, then we’re on the right track. We do what we say we will do and we are able to prove it to regulators. If we discover an area where we are not meeting standards, we quickly ask how can we change? That’s very fundamental, maybe the most fundamental element of leadership at an educational institution. If we remain true to that we are able to be of service.

Participant Three summed up her personal leadership philosophy relating to compliance stating:

So, my goal has always been to create an exceptional culture of compliance. I explain to my staff that each time you're faced with a situation where the right decision isn't perfectly clear such as trying to determine if an outlying calculation counts in our placement ratio, or whatever scenario you're looking at, is being able to defend it. You must be able defend it to a regulator, you must be able to defend it to yourself when looking in the mirror, and most importantly defending it to your maker. Keeping this in mind helps ensure we always do the right thing.

Despite the general disagreement with the majority of federal regulations, including those from the Duncan Era, all leaders interviewed universally expressed a strict commitment to regulatory compliance. Several of the leaders stated that they actively lobbied against the Duncan Era Regulations and some are actively working to reduce the impact of Bob Shireman and the Century Foundation in their state by state campaign to enhance the Duncan Era Regulations via state controls. Nonetheless, according to the participant leaders, compliance is a central focus of institutional operations.

### **Theme Six: Regulatory Harm to Students Outweighs the Benefits**

During the interview process, each of the participants shared their perceptions of whether or not the Duncan Era has helped students. The data gathered from the participant responses to this question provide insight into the primary research question:

What are the perceptions of higher education leaders who worked in proprietary education during the Duncan Regulatory Era?

When asked the question “In what ways do you believe the regulations have helped students” which is one of the key sub-questions of the study, opinions varied. Participant Two for example stated “Do I think they have helped? No, not at not at all. I can't point to anything that has. No, not really.” Other participants, as stated earlier, believe that some student benefit has resulted from the Duncan Era regulations. Participant Three for example believes that as a result of the regulations there now exists “improved awareness among students” and that they “are doing a little more due diligence in seeking out college opportunities.” Others agreed that the Duncan Era regulations made some sense on the surface particularly “if you look at regulation as a mechanism for protecting consumers in higher education and protecting taxpayers” as noted by Participant One. Another universal theme however was that the observable benefits could have been achieved through less evasive means and that the participants believed that the impact on students resulted in more harm than benefit.

Participant Three noted that while some of the disclosures required of proprietary institutions originating from the Duncan Era are in theory a good idea, students suffer from “information overload” and without a proper frame of reference are unable to decipher the information provided. She continued:

This whole idea of consumer protection is fine. However, the information is incredibly confusing. This is primarily due to competing definitions. Your state may have one set of disclosures, your accreditor may have another, and then the federal government requires an entirely different set. The amount of information that has to be disclosed, in theory to help students understand the choice their making, only confuses them further.

Participant Five perceived that students attending proprietary institutions often leave state run schools because of cumbersome processes or the “red tape required by public colleges.” At proprietary institutions, she argues:

They're given the hand-holding they need. We literally help them through the process. They're not just a number in a university system. They don't feel like a number at our schools. So yeah, when they drop out of STATE UNIVERSITY NAME OMMITTED because nobody cares about them and they come to us.

Yeah, our customer service skills are second to none. We do treat them extremely well, don't we?

Yet she believes that the regulations get in the way of this service and students simply “misinterpret what they are reading. They aren't sure what the data means and often times they simply put off schooling or quit altogether.” Participant Eight shared a similar belief stating that

The regs hurt students by requiring tons of bureaucratic steps, paperwork, reports, and the like to demonstrate what's already being demonstrated for the regional accreditors. We now have to give the same information in an entirely different format in order to be recognized by the Department of Education. So redundant! Entirely unnecessary and when you are required to put so much energy into regulations there's a trickle down to the student. We're unable to invest the time spent on regulations on the needs of our students.

Participant Five further elaborated on why she believes the regulatory environment is not beneficial to students:

So, when you have a regulation, that's arbitrary in its construction, it kind of like destroys everything. Like a nuclear bomb that destroys everything. It's not very precise in its targets. And that's where these regulations have an issue. So, it impacts the students negatively.

The resulting impact of these broad-based regulations, according to Participant Five, includes unnecessary campus closures. She expressed her belief that if you are a student who has already failed in your attempt at traditional education, and then attend institutions who close under the weight of regulatory burden, “you've lost the ability to continue your education.” Participant Six shared a similar perception to Participant Five’s nuclear analogy stating “you think about whole institutions who like overnight were just being obliterated. I think that that's tragic and one wonders if there couldn't have been more done with those institutions.” Participant Seven recalled watching many of these institutional closures and the difficult leadership decisions that her leadership team made in the wake of heightened regulatory changes:

I do believe that the Duncan era has been responsible for the closures of a number of institutions. And I say that because during the time that the regulations were supposed to be implemented we started asking ‘what can we do to make this a better program?’ ‘Do we just have to teach these out?’ So we started down that path of changing programs because we were trying to get ahead of the regs saying ‘if we have an open house this September,’ we're in high recruiting season for next fall, ‘we can't be promoting a program is going to be closed. Rather we're gonna have to stop next year based on the gainful employment regulations.’ Consequently, we closed about four popular programs. You know, and then we

started down a path where we were not enrolling students, it was really insane.

So, it just it was it was a PR enrollment nightmare for institutions. It really was and it made you sick to your stomach. I remember being sick to my stomach a couple of times, looking at this data and asking ‘what is it going to do to us?’

Similarly, Participant Three noted that during the Duncan Era, “We eliminated programs just based on sheer entry-level salaries that could over time become something better. But because of the regulations, a number of schools, including us, had to close programs that lead students to good careers.” Participant Eight shared a similar experience:

As a result of federal regulation and especially the advent of gainful employment, we discontinued a number of successful programs. We stopped recruiting and the few remaining students were either taught out or we facilitated transfer to another institution. Ultimately the net was maybe four or five successful degree programs ceased to exist. In fact, every one of our institutions closed the liberal arts programs, and I'm one of those who earned my doctorate in history for goodness sakes. I believe there is tremendous value in the liberal arts. Our students have been robbed of those rich experiences simply based on potential earnings upon graduation.

Participant Four pointed out, “when it comes to Gainful Employment and all the metrics, we've got to really stick with programs where the salaries are high upon graduation.”

Participant Twelve expressed concern that only programs that lead to high salaries are being offered and lamented the types of programs that have been closed as a result of the regulatory environment stating, “look at the number of schools that are dropping Early Childhood Ed and similar type programs that just don't meet Gainful Employment. I can't

see any avenue where Arne Duncan really put the students first.” Participant Nine described the reduction in student enrollment resulting from selective program closure as weakening proprietary institutions. With the added regulatory pressures, many of the weakened institutions ended up closing.

I'll say this, due to the regulatory pressure we had a number of schools, a lot of schools, at least in our state, closed particularly starting around, like 2014-15 and its even going on still today. The reason for the closure was two things. One, was enrollment declines. Financially this created problems. And two was the regulatory burden, or in some cases the fear of the regulatory burden. And almost all these schools were telling me the same thing. And that was, that if it was one of those two things, they could have survived, but both hitting them at once. It just forces decisions. So, if they just had enrollment declines and financial problems and they weren't getting the regulatory pressure they could've survived that. Or if they just had regulatory pressure but enrollments were booming, they could survive that. But there was the one-two punch. That just had a number of owners just say 'that's it. I'm done.'

Participant Nine then described how the regulatory environment has, in his estimation, harmed students:

I would say they've hurt. Because what's happening is there's a lot of programs that either have folded or you know, are threatening to fold. And these are programs in careers that are actually in very high demand and our labor market needs graduates. And students could benefit from them. But now they do not have those options in their communities. So I would make the case that the

regulatory actions directly harm students because they hurt their choices in their education.

Participant Three shared a similar concern:

You know, I think about some of the different communities we're in. And in some instances, we were the only school in town that offered that sort of training. And in other instances, sure they could do it, but they would sit on a waiting list for two years. And with the student that we serve, if they didn't have a direct pathway to an immediate career, they didn't enroll. And so when these programs close students have to go take more generals at a community college in order to get into similar programs. But in many cases, they've already been to the Community College and not found success. Returning so that they can be on a waiting list for another two years didn't serve them.

The impact of the regulations as perceived by Participant Three is that many students are simply unable to obtain the education that they desire "I feel like in general they were in the place where they had finally found success and when that wasn't available to them anymore. I think they gave up." This is among the reasons Participant Seven shared his belief that those responsible for many of the sector's unique regulations have not spent the time trying to understand the students they serve. "They have to really get to know the students. They have to understand what the demographic is and how it's impacting students in both the positive and negative ways when they're making policy decisions."

### **Theme Seven: Particular Impact on Low-Income and Minority Students**

While theme six and seven contain certain overlap, the shared perceptions of the participant leaders regarding the specific impact of the Duncan Era regulations on low-

income and minority students was dense enough to create a separate, albeit related, theme. This theme provides key insight into the primary research question:

What are the perceptions of higher education leaders who worked in proprietary education during the Duncan Regulatory Era?

The data gathered from the participant interviews also directly assists in understanding the key sub-questions:

5. How do proprietary education leaders describe the Duncan Regulatory Era's impact on the operations of their institution?
6. Do proprietary education leaders consider the policies of this era beneficial to students?
7. How do proprietary education leaders describe the impact of these regulations on low-income and minority student populations served in large measure by proprietary education institutions?
8. What approaches to regulatory compliance should leaders of proprietary institutions take under future conditions of heightened oversight?

In part the overlap between Theme Six and Theme Seven is a result of proprietary institutions serving high percentages of low-income and first-generation minority college students. As noted elsewhere in this study, Alford (2014) describes proprietary institutions as one of the few avenues for minority students to enter the business world and start productive careers (Alford, 2014). Also, according to Alford (2014), federal regulations have served to reduce higher education opportunities for African Americans and other minorities as well as present challenges for businesses who rely heavily upon graduates from proprietary institutions. Consequently, as campus locations close

academic opportunities are reduced for traditionally underserved student populations and particularly minority students (Association of Career Colleges & Universities, 2014).

Therefore, as participants shared their concerns over the regulatory impact to campus locations, programmatic and institutional closure is among the concerns that produced overlap in themes six and seven.

Participant Eight expressed his belief that the proprietary education sector plays a lead role in educating low-income and first-generation minority students. He believes “Our mission is to provide professional opportunities for a segment of the student body that may be underserved by higher education.” Participant Nine shared that:

One of the best studies I've seen, it was probably done two or three years ago and it was a massive. It was multiple liberal arts universities got together for the most comprehensive analysis of looking at literally, like every student over a certain cohort. And following how many years every student from every school in the country. I mean, it was literally the entire cohort and when they got done with it, it didn't receive a lot of attention in the press because I don't think it was the result they were thinking. But the income mobility of the for-profit student was the highest of any sector. Meaning that whatever income you're coming into the school at whatever income level you're leaving at, the increase is the highest for students leaving the for-profit sector and that was nationwide.

Participant One also shared his perception about the role proprietary institutions play in the careers of low-income students. It is his live experience that the primary concern with many of the federal regulations is that low income students require a certain amount of loan debt in order to complete school.

The challenge of course, is that for low-income and minority students to afford college, they need to take out loans resulting in debt. The Federal Grants don't cover, you know, the cost. Right? This was a huge problem again, and it was very ideologically based with the whole gainful employment algorithms the department wanted to use first year.

Participant Two agrees and believes that federal regulations like the 90/10 Rule make it difficult to service populations that require student loans to complete school. He felt that the metrics introduced during the Duncan Era, if enforced, would have exacerbated an already difficult situation. He stated:

First generation college students in general struggle with many of the metrics, such as loan repayment. You know, it's disproportionate. Institutions were forced to consider during the Duncan Era implementing policies that would kind of be quasi prejudicial. For instance, I could prevent any problems with Duncan Era regulations by requiring all students to pay a cash deposit \$1,000. That would screen everybody that would likely not be able to repay their loans. So, on one hand we would meet the regulations, but on the other hand, we would then be a school for rich kids. We would, be satisfying the regs by limiting access to first generation college students, primarily poorer kids, and first-generation minority, or immigrant students. That wouldn't help anybody!

Participant Six shared that his institution has already had to make difficult decisions and shared that due to the penalties associated with regulatory failure, "Our Institution is forced to shy away from students who may be disadvantaged in some way or perhaps not have the best academic preparation leading into higher ed." Yet even without Gainful

Employment being enforced Participant Two expressed that he worries about the impact that the state by state regulatory reform efforts of the Century Foundation will make it even more difficult to service low-income students and the challenges would extend to military and VA students.

Shireman has been fighting to include VA and military funds in the 90/10 ratio. If that happens, we would cap our enrollment. You know, we would accept the first hundred VA or military students in or whatever, you know, and then we would cap it. Yeah, not only low-income students but servicemen and women would be limited in their educational choice. And, in this state, there are no nonprofit options. I think this is why students chose schools like ITT in the first place because the government school options wouldn't work.

While community colleges are often suggested as alternatives by proponents of regulating the proprietary education sector, Participant Two believes that in general community colleges do not serve low-income and first-generation minority students at appropriate levels:

I think low income and minority students simply don't have the access to offerings because community colleges are the DMV of higher ed and the state universities aren't supporting them. There are a couple of giant nonprofit, pseudo for-profit, Southern New Hampshire University types online, but online is not the solution for every nontraditional student. Many of them need something hands-on. These giant online schools are not good at that.

Participant Eleven shared his opinion stating “I don't think the public institutions are student oriented. I think they're faculty oriented.” Participant Three expressed similar concerns.

In my opinion, I believe that it's impacted that those populations dramatically and largely because I firmly believe we excelled in serving them. They're not populations that were well served by community college or by a large class sizes or by a traditional experience. They didn't have the familial support that a traditional college student has.

Participant Four also believes that the proprietary sector does a better job at serving low-income and first-generation minority students.

Well, I think that you know, when you look at individual students that have attended our institution and you talk to them and you understand that if they have gone anywhere else their chances of success would have been lower.

Participant Five argued:

The reason why they come here is people know us to be a little bit more concerned about the individual student than the STATE SCHOOL OMITTED where they just they just fall through the cracks. They are not good at programs for first gen minority students.

Expressing similar concerns, Participant Three shared the following story:

I remember very clearly when we were meeting with different student groups talking to them about what Gainful Employment could mean. And it could mean, you know, the program or closure of schools, and just helping them to understand the impact. I remember it vividly because a student in the back of the room stood

up and she's like, 'where do I go now?' She had been other places. She had already left places where she couldn't be successful. She was finally feeling successful and she's like, 'where do I go now?' Yeah, if that doesn't make you want to stand up and fight for students, I don't know what will!

Participant Four also believes that the federal regulations have been harmful. "And so as the proprietary education sector has shrunk due to the impact of Duncan or Shireman or whoever is responsible for the regs, I mean where else can these students go?" He continued:

The community college may be an option, but when you start parsing the data and the outcomes; when you look at adult students, when you look at Veterans, when you look at first generation minority students, the community college structure fails that population miserably! So, if we're not here, no public college is going to have faculty show up 12 months a year. They're not going to have them attend year-round. They're not going to have everybody attend full-time. So, if you are accepted in our institution your chances of succeeding are nearly triple that of the local community college here. It's actually more than that because our local community college, that has almost the exact same demographics, 42 to 43 percent Pell eligible students, it takes them more than three years to graduate with an associates. We graduate students with Bachelor's degrees in about 2.6 years.

Sharing a similar perception, Participant Eleven argued "At the end of the day, if you go back and research how the impacted students are doing, those that their institutions closed. The data tells you that they're not doing very well."

In speaking on some of the schools who have closed including ITT Technical Institute, Participant Seven noted,

For the lower socioeconomic students, the more vulnerable students, the minority students, they've been serving them for years and years and years and have been a terrific answer to some of those students who cannot get into traditional higher education institutions. So that sort of went away and now these students are not being served, they're not choosing to go to traditional colleges, they just aren't going anywhere.

In contrast she notes "minorities particularly adult minority students and you look at the outcomes and what happens when they go to a community college. It's abysmal!"

Similar to the other participants she also believes that the wide institutional closures were harmful:

Did they think about what would happen to the students once all the schools were shut down? They're left with nothing and I think that that's awful! You have these students who have put up so much money and borrowed money to earn a degree. If they're halfway through or even come close to graduation and some of these institutions are closed and there's no one there to really to pick up the pieces for them. What I've seen over the years is that even the federal government is not doing what they should. Okay, so if you just close these institutions, why don't you think through that a bit more carefully? Like with the whole Corinthian thing. I mean, it's like why would you do that so fast? You really need to think about these students and ultimately come up with a plan for them before you go ahead and lock the doors. So many have been left out in the cold and they're struggling,

you know, as far as their debts. Some of these loans have not been forgiven, so it just really, it's so convoluted and it's impacted a lot of students in a negative way! She concludes by stating “Doors were closed to these poor students. There's just more to it than going after the institution itself.” Participant Six shared his opinion that regulators and policy makers can do a better job addressing any challenges they believe the sector is experiencing:

I think that the unfortunate thing in the long run is that disadvantaged students are impacted in a painful and an unfortunate way. If there's some red flags that would give regulators some concern, it's like, let us come in and engage in further investigation to determine what some of the causal factors are. And do so with the best of intentions. Then only after all of that, if it's becoming apparent that students truly are being disadvantaged, ripped off, whatever the case might be, then lower the hammer by some accreditation action.

Participant One shared similar feelings:

So by taking the approach that the DOE took which was the death sentence approach. They took it with Corinthian and they took it with ITT. They had to be willing to put hundreds of thousands of people on the street and they did. And back then, the department did not have a plan for either erasing the student's debt and giving up the credits. They do that now and actually they're not very good at it. At least they have a program. Now if your school shuts down, you in theory, can choose to have your debt relieved if you give up your credits, right or you can transfer your credits to another institution. That wasn't in place, so, you know when you think about it, that's why I was saying that you know, I was blown

away by how in my view, this is my view, but I was blown away by how shockingly extremist ideology was.

Participant Seven concluded the interview by sharing her opinion:

As a Democrat I feel my party failed. They failed minority students. They failed students in poverty. The same people they claim to stand for. I'm still a Democrat, but am deeply frustrated by what happened with proprietary higher ed schools!

Participant Nine spoke at length about how important the sector is to low-income and minority students but also shared his opinion that the regulations, because they have punitive measures for institutions who serve ratios of students who require federal financial aid to cover the entire cost of their programs, have made it difficult to serve them:

The regulations have negatively impacted low-income and minority communities. And I'll say a couple of things. One, is since our sector does educate the largest percentage of low income and many cases, minority populations, that means that the regulations, are negatively impacting those communities because we just by nature educate a larger percentage. And there's multiple reasons, you know why we educate a large percentage. In many cases they are not getting into traditional four-year liberal arts schools for whatever the case may be. But we are in many cases their only options, or one of their only options, you know. I would say our schools do a better job of holding students' hands through the process and helping them complete and get through. So, there are students that come with vulnerable backgrounds that if they go to a Community College or traditional liberal arts school, no-one's holding their hand. They Don't keep an eye out for them. And

then a lot of times they drop out or fail. Or they get lost, where our schools will from day one till completion, and even post completion in terms of job placement, will do a better job of holding the hands of their students through the process.

Participant Four elaborated further on how he believes the Duncan Era as well as previous regulatory measures have harmed students. His perception encapsulates the general sentiment expressed by the other participants:

When proprietary schools close, students are harmed. The public is significantly harmed, employers are harmed. There's a real harm when you throw away our type of education. Students that attend our school tell us that we are an institution of Second Chances and so we want our staff to grasp that concept. We've got to give people a second chance, but our sector is also kind of the educator of last resort and if a student doesn't make it at our school, I think they generally give up on higher ed. 57 percent of our students have attended college before they came to us. So, I mean, they know what the alternatives were. They have already been there. Well where else is there to go after that?

As reflected in the above comments, the participants universally expressed pride in the students that the proprietary education sector serves. The each also universally perceive that the regulations enacted in the Duncan Era as well as regulations from previous eras such as the 90/10 Rule make it difficult to serve low-income and first-generation minority students. Nearly all participants lamented the fact that the higher education system in general does not serve these populations effectively and as proprietary institutions disappear, these vulnerable student groups may be left without viable avenues in higher education.

### **Analysis and Synthesis of Findings**

The qualitative phenomenological approach employed in this study allowed for a rich and insightful look into the perceptions of leaders in proprietary education. In particular, insights into how leaders view the current and past regulatory landscape, and what they are doing to successfully lead their institutions under heightened regulatory scrutiny emerged. While each leader had unique challenges and some have weathered the difficult regulatory environment better than others, their general sentiments and experiences provided a very clear thematic description of their perceptions. These leaders were separated by geography and represent nearly every region of the United States. Yet despite the regional separation, the lived experiences of these leaders have been remarkably similar. In fact, the primary themes began to emerge early during the first few phone interviews, and it became clear that saturation had been achieved with only twelve participants. The strikingly similar perceptions and experiential descriptions provided by the participants elevated the confidence of the researcher that these phenomena are representative of proprietary education leadership experiences sector wide.

The themes that proved to be universal were perhaps the most noteworthy. All leaders for example, argued for regulatory equity. They were not asking for special treatment or for a release from regulatory accountability, rather they feel that any regulation deemed to be beneficial to students should be applied across all sectors of higher education. It was the perception of most that because the Duncan Era regulations were aimed strictly at proprietary institutions that they were driven by politics rather than concern for students. They also believed that even though many of the Duncan Era

regulations have been dialed back by Secretary DeVos, the perception of the sector created in large part by proponents of the regulations, has made it difficult to operate. In other words, it has not been strictly the regulations which have created the leadership challenges but rather the general perception of the industry that they believe was purposefully tainted during the regulatory battles of the Duncan Era. The participant leaders also expressed a universal perception that low-income and first-generation minority students are being harmed by the federal regulation that they believe is limiting institutional options, reducing programmatic choice, and in many cases prohibiting these vulnerable student groups from receiving a college education at all. Yet despite these hard feelings toward what they perceive to be discriminatory federal regulation, all leaders universally expressed a deep commitment to regulatory compliance and a belief compliance is saturated throughout their institutions. Furthermore, most participants used the term “culture of compliance” when describing their leadership responsibilities. While some of the institutions represented by the leader participants are thriving others have experienced massive financial loss and significantly reduced enrollment along with multi-campus closures. However, all leaders perceive that the reason they are still operational is their commitment to regulatory compliance.

### **Summary**

This chapter has presented the thematic elements of the phenomenological qualitative study by sharing the perceptions of proprietary education leaders using their own words. The findings of this study represent the lived experiences of 12 proprietary education leaders who have experienced the challenge of leading institutions of higher

education under heightened regulatory scrutiny. In the next chapter the researcher's conclusions, certain proposed solutions, and leadership implications will be presented.

## **FIVE: CONCLUSIONS AND RECOMMENDATIONS**

### **Introduction**

This qualitative phenomenological study sought to better understand the lived experiences of proprietary education leaders and their perception of federal regulation of their sector. The Duncan Regulatory Era was used as a framework for the study as it served as the highest peak thus far in attempts to regulate the proprietary education sector. However, not all regulations from this era remain in effect and as indicated by the study participants, some regulations that predate the Duncan Era, such as the 90/10 Rule remain problematic for proprietary education leaders.

Given that federal regulation of the sector has historically been in flux based on partisan conditions, the input from proprietary education leaders who lead institutions through the challenges of a hyper regulatory time period, may prove instructive for future leaders and policy makers. These leaders described in their own words their perceptions of, and experience with, the heightened regulatory environment characteristic of the proprietary education sector. Participant Two summed up this challenge by stating “the only area of US law that is more verbose than higher ed is the IRS tax code. It is not healthcare, not banking, not pharmaceutical; nope, it's higher ed.” The data therefore obtained from these leaders working under unusually difficult regulatory conditions is valuable if one is to truly understand the impact of federal policy on the proprietary education sector. Utilizing this data, this fifth and final chapter presents the researcher’s conclusions, proposed solutions to key issues surrounding regulatory compliance, and the implications of this study for both proprietary education leaders and policy makers.

While a considerable amount of literature exists on the regulations introduced under Secretary Duncan's tenure, most authors, as stated elsewhere in this study, have primarily focused on the merits of the rules. However, the challenges associated with proprietary higher education are, at their core, complex leadership problems. Consequently, a hole exists in the current body of literature and the perceptions of institutional leaders who have operated under expansive federal regulation is needed to better understand the sector and its regulatory environment. This study provides an understanding of how successful leaders perceive compliance issues and how they lead institutions under these conditions to compliant outcomes.

Recognizing that the higher education regulatory landscape fluctuates largely as a result of partisan politics, the perception of leaders who have navigated the Duncan regulatory landscape will prove insightful in analyzing its legacy and impact. Additionally, these perceptions may prove useful in determining possible future regulatory options and considerations for policy makers. Finally, the approaches taken by these leaders in servicing large percentages of America's low-income and first-generation minority students under these regulatory controls, may be instructive for leaders across all sectors of post-secondary education in America.

### **Purpose of the Study**

The purpose of this phenomenological qualitative study was to describe the perceptions of higher education leaders of proprietary institutions of the Duncan Regulatory Era. These insights will assist in understanding:

- The ramifications of the regulations on institutional stakeholders.
- How these regulations may inform future higher education policy decisions.

- How institutions may achieve compliant leadership under future regulatory scrutiny.
- If the climate induced by the Duncan Regulatory Era ultimately has proven beneficial to students up to this point in time, particularly low-income and minority student populations, who comprise a significant component of enrollment in the proprietary education sector.

Much of the existing literature emerged during the formation of the regulations and served to champion or oppose the merits by arguing for or against what were, at the time, forthcoming policies. Naturally, many of the authors were policy analysts, lobbyists or other representatives from special interest and activist groups who had a particular stake in one side or the other. Other contributions to the literature have come from elected officials, government bureaucrats, journalists, and media pundits. Relatively few contributions have been made via peer reviewed research or other academic channels. This study enhances the existing literature by providing a retrospective analysis from those who were required to directly lead institutions and experience firsthand the regulatory impact of the Duncan Era along with the aftermath of this era. These important voices are not currently present in the majority of existing literature on the topic.

### **Aim of the Study**

The aim of this study is to provide perspective for higher education leaders, school owners, and governing boards that will aid in regulatory compliance, and regulatory dialogue as well as provide insight on how to engage with policy makers in future regulatory eras. Examining the lived experiences and insights of proprietary education leaders during an era of heightened regulatory scrutiny serves as a tool for

institutions working to maintain federal regulatory compliance and prepare for future policy discourse. Future leaders may find the lived experiences of those who have worked through the Duncan Regulatory Era and the challenging climate that evolved in the wake of this particular heightened regulatory time period to be helpful.

### **Proposed Recommendations and Solutions**

There were seven primary themes that emerged from the phenomenological qualitative data providing insight into the perception of proprietary education leaders in the wake of the Duncan Regulatory Era. They are as follows:

Theme One: Call for Regulatory Equity.

Theme Two: Regulations Driven by Ideology.

Theme Three: Regulations Enacted in a Politically Charged Environment.

Theme Four: Compliance Creates Critical Resource Strain.

Theme Five: Culture of Compliance.

Theme Six: Regulatory Harm to Students Outweighs the Benefits.

Theme Seven: Particular Impact to Low-Income and Minority Students.

Each of these themes, expounded upon in Chapter Four, have served to inform the proposed recommendations and solutions presented in this chapter.

The proposed recommendations contained in this chapter are likely to be perceived as difficult. The difficulty in part stems from the ideology and politically charged environment surrounding the proprietary education sector identified and described in detail by the study participants. Nevertheless, past attempts by the sector and its regulators to skirt around the vividly present ideology and political controversies have been unsuccessful. For this reason, the recommendation is to go directly through these

obstacles in order to seek an appropriate and sustainable solution. This will require fundamentally that all stakeholders unite behind Theme Seven derived from the data and work on behalf of the higher education needs of low-income and first-generation minority students; likely the only area where all parties might find common ground. While stakeholders may not agree on tactical approaches, holding this up as a strategic goal will likely generate consensus among stakeholders. This particular theme of finding common ground by placing the educational needs of low-income and first-generation minority students as paramount will be asserted throughout this chapter.

With the baseline of the higher education needs of low-income and first-generation minority students working as the standard, the data gathered in this study suggests that proprietary education leaders building symbiotic relationships of trust with regulators is the path to a sustainable solution. The term regulators is used in this chapter as an umbrella term to include those who make policy including elected officials and public administrators as well as those who enforce policy such as accreditors. The relationships that proprietary education leaders are to build should extend beyond the superficial. Leaders should identify all regulators who impact their institutions and actively work to build and maintain trust through ongoing human interaction. There are five specific recommendations outlining areas in which proprietary education leaders should focus on as they develop relationships with regulators. They are:

1. Proprietary education leaders must build relationships of trust with regulators in order to identify obstacles to the success of low-income and first-generation minority students. These may include public policy obstacles as well as proprietary institution practices.

2. Proprietary education leaders must reckon with the available data, including that contained in the literature review, indicating that our nation's poorest students are served by proprietary institutions and in fact make \$8,000 on average less per year than students attending community colleges (Farrell, 2003; Appling, 1993). This presents a number of leadership challenges requiring proprietary education leaders to work with regulators to ensure that students choosing to attend proprietary institutions have a viable pathway to accessing and completing their education. For this reason, it is recommended that proprietary education leaders work toward the replacing the 90/10 Rule with viable solutions to default rates. This cannot be achieved without good relationships with key regulators.
3. Proprietary education leaders must build relationships of trust with regulators in order to facilitate candor about ideological positions in the regulatory process. As demonstrated elsewhere in this study, a range of ideological and political positions are at play along with an array of motives in the regulatory process. As stakeholders make their positions clear, it is likely that most will be hierarchically subordinate to advancing higher education access and completion for low-income and first-generation minority students. This section presents the Common Values Alignment theory as a tool to aid in identifying and aligning the values of stakeholders from a hierarchical framework.
4. Proprietary education leaders must work maintain a culture of compliance as described in Chapter Four. All leaders participating in the study espoused a commitment to regulatory excellence and those who met this difficult standard are in better operational positions than those who fell short of their stated

commitments. To fully realize this ideal, regulators must be involved in the conversation. Understanding what compliance looks like from the regulators point of view will be difficult without engaging with regulators.

5. Proprietary education leaders must work toward a standard of regulatory equity.

Theme One in Chapter Four was a universal concern regarding the inequity of higher education regulation. The researcher's Cross Adaptive Higher Education Policy model will be recommended as a tool to mitigate ideological approaches on either side of the debate. Working with regulators to develop models of equity may serve to mitigate the types of unintended policy consequences outlined throughout this study.

Each of these recommendations will be expanded upon along with support and implementation for the solutions.

**Recommendation Number One: Build Relationships of Trust with Regulators**

As stated earlier, the challenges associated with proprietary higher education are at their core, complex leadership problems. In chapters two and four, the researcher demonstrated that the leadership challenges extend beyond the proprietary education sector. The political, regulatory, media, and social leadership realms also share in the burden of solving these complex challenges. Unfortunately, to date, these particular stakeholder groups have failed to find meaningful common ground leading toward sustainable solutions. To bridge this divide, it is important that sector leaders and regulators share in the leadership role given the impact both have on higher education. This impact notably includes higher education access and academic opportunity for first generation low-income and minority students and this intersection should, in the opinion

of the researcher, serve as common ground on which all stakeholders agree upon the strategic aim.

If regulators and other stakeholders are to agree with this proposition, proprietary education leaders must take the lead in building relationships of trust. According to Mayer, et al. (1995) the concept of trust can be understood to mean different things under different circumstances thereby obfuscating the nature of trust. The definition of trust for purposes of this study was proposed by Mayer, et al. (1995) and reads as follows. “The willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trustor, irrespective of the ability to monitor or control that other party” (Mayer et al. 1995, p. 712). This definition is fitting for building trust with regulators in order to increase higher education access for low-income and first-generation minority students. At least two components are worth brief exploration in relation to this study.

Mayer et al. (1995) suggest that making oneself vulnerable requires the willingness to take risk. The study data suggests that most proprietary education leaders engage with regulators on a casual level. However only a minority deeply invest in cultivating working relationships. The data suggests that leaders are less willing to take this risk out of fear of repercussion. Participant Number Two perceived “it’s dangerous for us to put our neck out” and Participant Number Eight expressed concern for “knee jerk reactions” by regulators when dealing with proprietary institutions. Several invitations to take part in this study were declined out of concern for political repercussion. Participant One provided insight into a perceived culture for proprietary education leaders where they are under constant attack by regulators. He perceived that

has produced a “psychological” mindset leading to a “sense of despair in the industry from being under attack, you know, unrelenting attack day after day, week after week, month after month for a good eight to 10 years.” It is possible that this fear of repercussion has resulted in the majority of proprietary education leaders lying low rather than being willing to take the risk of vulnerably engaging with regulators.

The definition of trust provided by Mayer, et al. (1995) also includes the component of “expectation that the other will perform a particular action important to the trustor” (Mayer et al. 1995, p. 712). Participant Five argued that proprietary education leaders need “more voices present at the hearings” citing that “this is a democracy.” Based on the study data it is not clear that when voices were present at hearings, they took the form of offering actions deemed important by the other party. Rather the data suggests that most encounters take the form of an arena where regulators and proprietary education leaders battle for their respective interests. Proprietary education leaders according to the study data perceive that regulators seek to harm the sector fueling a secondary perception that they are consequently required to defend their institutions from regulatory attack. While these perceptions may not be inaccurate, it is recommended that proprietary education leaders adopt a different path going forward. It is clear from the data that sector leaders perceive that they are doing noble work in the area of providing higher education access to low-income and first-generation minority students. This claim can be supported by existing literature (St. John et al., 1995; Whistle & Hiller, 2018; Wilms et al., 1987). The literature also suggests that in the absence of proprietary institutions higher education access for vulnerable student populations diminishes (Alford, 2014; Fain, 2014; Guryan & Thompson, 2010; Kreighbaum, 2019). In other

words, proprietary education sector leaders are capable of performing actions that are of public value. Sharing this information and highlighting positive student outcomes when building relationships with regulators will increase the likelihood of trust whereas preparing for battle is likely to diminish this prospect.

### *Support for the Solution*

Lipman-Blumen (2006) suggested a simple standard to be employed in complex leadership challenges. Namely leaders must recognize that as we “take up the immense cause of the Other, we inevitably learn to lay down the smallness of ourselves” (Lipman-Blumen, 2006, p. 254). In this case, low-income and first-generation minority students are to be seen as those with whose cause Lipman-Blumen suggests taking up an “immense cause” to which those in positions of power, including proprietary education leaders and policy makers alike, can subordinate the “smallness of their selves” in support of a critical higher education need in America.

This idea is not unlike the Ignatian concept of “Cura Personalis” a value embedded in Jesuit institutions of learning. The Latin phrase can be translated as “care for the entire person” (Otto, n.d.). The Creighton University homepage for example states:

Cura Personalis is having concern and care for the personal development of the “whole person” and dedication to promoting human dignity. This includes being open to and accepting of a person’s religious and spiritual development. It also describes the type of care we give as educators...We give not only of our knowledge, expertise and skill, but also of ourselves. The care given, and the care

received, is “personal care,” not “institutionalized care” (Creighton University, n.d.).

Lipman-Blumen’s (2006) standard coupled with the concept of *Cura Personalis* served to inform this study and proved to be a useful tool when exploring the proposed solutions in this chapter. Alford (2014) for example pointed out that proprietary education institutions are among the few avenues for African American students to enter the business world and start productive careers. Participant Eight expressed his belief that “Our mission is to provide professional opportunities for a segment of the student body that may be underserved by higher education.” Participant Six shared his opinion that regulators and policy makers can do a better job taking the impact on low-income and minority students into consideration when formulating policy:

I think that the unfortunate thing in the long run is that disadvantaged students are impacted in a painful and an unfortunate way. If there's some red flags that would give regulators some concern, it's like, let us come in and engage in further investigation to determine what some of the causal factors are. And do so with the best of intentions. Then only after all of that, if it's becoming apparent that students truly are being disadvantaged, ripped off, whatever the case might be, then lower the hammer by some accreditation action.

The collected participant data suggests that when a policy maker puts ideology or concern for political optics ahead of the interests of minority college students, they have violated Lipman-Blumen’s principle of taking “up the immense cause of the Other” and learning “to lay down the smallness of ourselves” (Lipman-Blumen, 2006, p. 254).

Likewise, when a proprietary education leader plays to the base needs of vulnerable students, which typically is the hope for a better career in the shortest time possible, and does so in order to build up the institutional leadership or ownership first, and places the need of the student as secondary, they also violate this principle. Participant Five, in acknowledging this stated, “We should be able to make good education accessible to students. We should not have tuition costs that are prohibitive to students of lower income.”

Before moving beyond this concept it is worth noting that Barton and Geger (2014) parse this a bit more by suggesting that *cura personalis* for Ignatius would have meant that faculty and staff must first be cared for. Their claim requires some historical background. Prior to Ignatius, religious orders were monastic or mendicant in nature. Whether it was monks dedicated to silence inside a monastery or Franciscans leaving their places of work throughout the day in order to engage in prayer behind the doors of their homes, the idea that the religious life required solitude and silence in a fixed place was prevalent (Barton & Geger, 2014). Ignatius Loyola in contrast felt that religion required one to actively engage with the world, particularly in areas where the needs of the Church were greatest (2014). Consequently, Ignatius ran the risk of his men laboring under exhaustion. It also meant that the right men must be placed in the right jobs. In response Ignatius codified the idea of caring for one’s health and insisted that his men had the bodily strength to carry out their labors (2014). An argument can be made that an institution of higher education can become toxic when proper care is not provided to faculty and staff. Toxic leaders generally instill burnout, fatigue, and frustration which can easily spill into the classroom.

In contrast, Greenleaf's (1977) concept of Servant Leadership is a pathway to empowering rather than exploiting personnel and students. Both proprietary education leaders and regulators have the obligation to empower students by both providing the necessary resources to obtain an education while also promoting a culture conducive to academic success. In a healthy regulatory environment both leaders and regulators work together to find common sense measures that remove barriers to entry and program completion. Barton and Geger (2014) suggest that the pathway to such a culture requires that *cura personalis* applies first to institutional personnel. As faculty, staff and administrators feel empowered they are more likely to align with the institution's values and priorities creating a positive feedback loop that strengthens the institutional fabric. This will in turn according to Barton and Geger (2014) and Greenleaf (1977) translate into an empowering student culture adding another layer of strength to the institution.

A minority of the study participants explained that they spent a great deal of time getting to know public officials at the local, state, and federal levels. For example, Participant Number Four stated that he invests time meeting with his representatives in Congress and the Senate, both in Washington and in his home state. Public officials at all levels have toured his institution, have engaged in dialogue regarding the students he serves and the outcomes of his programs. He has specifically demonstrated to them the success of low-income and first-generation minority students. Participant Number Four and the politicians that represent him have arrived at the conclusion that his institution is key to educational access for these student groups. Consequently, as legislation is introduced that may prove harmful to proprietary institutions it is heavily scrutinized by

these representatives. Within the past year, the state legislature voted against measures introduced that Participant Four testified would harm students attending his institution.

The literature and the study suggest that once legislation or regulations are introduced that are deemed harmful, proprietary education leaders mobilize and take defensive action. However, the narrative provided by Participant Number Four indicates that reactionary mobilization is not entirely adequate. Reacting to rulemaking results in compromise not prevention. Rather, proprietary institution leaders may likely have greater long-term success working to advance their narrative and demonstrate the effectiveness of their institutions to as many influential public officials as possible. Cultivating strong working relationships with officials and aligning on common agendas for student access to higher education is one of the best investments leaders can make if they wish for a sustainable future. Learning to see public officials and regulators as friends rather than enemies will be a mind shift worth working toward. In fact, it may be the only way forward.

### *Potential Barriers and Obstacles*

It is recognized that building regulatory relationships in order to advocate for good public policy is easy to do from a researcher's keyboard. It is also understood that the effort of building relationships with regulators carries inherent leadership challenges. In the case of proprietary education, reasons for these challenges include:

- The nation's federalist structure of state and federal powers.
- Both the states and federal government utilize unelected bureaucrats, such as their respective departments of education, to serve the dual function of creating policy through negotiated rulemaking and executing policy at the will of elected leaders.

- Once institutional and programmatic accreditors enter the picture, the leadership challenge compounds.
- Finally, when the unavoidable elements of partisan politics and ideological wills are added to the already complex mix of checks and balances, honest and objective leadership solutions are difficult to come by. Elected officials are under ideological scrutiny at every turn and consequently proprietary education currently remains a partisan issue.

Under this complex structure, it can be difficult for stakeholders to know exactly how to navigate toward their desired goals. Both policy makers and proprietary education leadership can be equally challenged in attempts to advocate their positions, however.

Those who have a knowledge of the policy process and the skill to navigate the complex landscape have an advantage over those who do not. This can lead to a particular challenge described by Lipman-Blumen as certain control myths that are at play in the psychology of superior-subordinate relationships including those that instill “the fear of repercussions” (Lipman-Blumen, 2006, p. 133). Participant Two pointed out that a true fear of regulatory retaliation exists, stating “it’s dangerous for us to put our neck out.” He lamented what was perceived as an abuse of power further stating “as I think about those times that we were getting hammered by the Department and others. It was like okay, you know, we’re doing some of the most honorable work you can do.” Yet in spite of this he indicated that “we’re being called scumbags, thieves, and liars on a daily basis.”

According to Lipman-Blumen (2006), there are a variety of thought processes at play in these types of situations. Among them is a concern for safety in that an “unsuccessful challenge to the leader will result in punishment for the challengers, as well as those they

represent” (Lipman-Blumen, 2006, p. 133). Arguably, this has been a weapon used by partisans or ideologues. Politicians on both sides of the proprietary education debate, or any other stakeholders taking action under ideological pretenses, can potentially harm vulnerable student populations.

As argued earlier, proprietary education leaders play a critical role in servicing vulnerable student populations. It is key therefore that sector leaders are vigilant in ensuring that these students are not merely serviced in order to build up the institutional leadership or ownership first, placing the unique needs of these students as secondary. This is not to suggest that leadership needs, including profitability, and the needs of the student are incompatible. While this fallacy is often assumed a-priori by opponents of the proprietary education sector (Miller, 2005), it does not hold up under scrutiny and deserves to be briefly touched upon here.

Kronk (2018) stated “while they accomplish many different tasks and serve various roles, at the end of the day, all universities are businesses. Whether they’re for-profit, private non-profit, or public non-profit, they operate on a budget and pay their employees” (p. 1). Profitability or fiscal viability, whichever term one chooses, is paramount to the mission of any college or university, regardless of their sector classification. An institution must reinvest in the student experience, staff, facilities, infrastructure, research, innovation, curriculum, and numerous other things critical to operating an institution of higher education. In reading literature on proprietary education or evaluating policy debates and commentary, the reader should take careful note of those who assume a-priori that an institution’s aim for profitability is problematic. At times writers have simply parroted or taken as fact in this regard, what others have

written before them as evidenced by this charge repeated again and again nearly verbatim. Under these common circumstances, this error in logic is unfortunate but forgivable. However, after conducting an extensive literature review for this study, and observing the commonality of this tactic used by those who should have the capability and responsibility to think more critically, the researcher has noted that those who knowingly employ this fallacy in their arguments perhaps fall into one or more of the following categories:

1. The individual or group simply does not understand the business of higher education;
2. The individual or group adheres to an ideology that insists that fiscal surplus to one degree or another is amoral;
3. The individual or group consciously includes inflammatory language such as “for-profit” in order to persuade the reader a-priori that bad motives are employed by proprietary education leaders;
4. The individual or group, argues that some profitability is acceptable. This is believed by the researcher, as an attempt used to reach moderate thinkers. In these cases, words ranging in their emotional gravitas from “excessive surpluses” to “obscene profits” are used. For example, a writer may argue something to the effect of “while some level of profitability is necessary, the obscene levels of profit that some for-profit schools are generating is concerning.” Statements such as this, common in the literature, suggests to the reader that an “excessive” level of profit is being made by some institutions and assists in persuading the reader that bad motives are employed by proprietary education leaders in this category.

It also by extension suggests that less profitable institutions might be more acceptable, although the researcher has not found an explanation as to why less profitable institutions might be preferable to those who are more financially stable in any of the literature reviewed.

As is the case with those who simply parrot what they hear or read, the circumstances of group one, listed above, is unfortunate but forgivable. It would be better that one take the time to become informed prior to writing about the sector, particularly given that the majority of literature encountered by the researcher falls into this first category, and therefore more likely to be read by the general public. However, in good faith, this study will overlook the problems created by group one. Those who employ tactics two, three, and four are violating the aforementioned litmus test and are putting an ideology, a personal bias, or argument, ahead of the “immense cause” (Lipman-Blumen, 2006). As heretofore stated, low-income and first-generation minority students are to be seen as those with whose cause that Lipman-Blumen suggests taking up. An immense cause to which those in positions of power, including proprietary education leaders and policy makers alike, can subordinate the smallness of their selves in support of a critical higher education need in America (2006).

It is recommended that the use of this particular fallacy, namely determining a-priori that profitable institutions are problematic, be removed from the discourse. In an honest discussion on how best to service students, particularly vulnerable student populations, advancing the notions that unprofitable, break-even, or moderately profitable institutions are somehow preferable, is not helpful. While it is doubtful that those with dogmatic views will abandon this tactic, it is recommended that in the course of building

relationships of trust with regulators, that proprietary education leaders engage in dialogue around this point. Through these conversations sector leaders and regulators will create more clarity into a solution for higher education choice and access for low-income and minority students. It is also recommended that proprietary education leaders be vigilant in pointing out, both to internal and external publics, the fallacious reasoning behind this commonly employed tactic in order for these publics to in turn socialize the message. Of course, this requires leaders to also be vigilant in ensuring their institutions are empowering students and producing strong outcomes. As the literature demonstrates, many leaders who fought regulations while failing to maintain institutional integrity are no longer operating (Kieler, 2016).

There is ample room for dialogue on what might constitute abuses of institutional earnings across all sectors. Common sense would suggest, for example, that an owner draining an institution of its full financial resources for personal gain likely constitutes an abuse. However, simply assuming a-priori that a profitable institution is problematic is an error in reasoning that convolutes the dialogue. Participant Eleven elaborated on this point by sharing that when “people are in charge, there is always opportunity, always room for corruption. There is no shortage of scandals across all sectors of higher education.”

### ***Implementation of the Proposed Solution***

Lipman-Blumen (2006), advocated for leadership that seeks to do good. She argued “contributing to the good of the larger group, rather than stockpiling one’s own power and wealth, would emerge as a more appropriate grail to be sought” (p. 249). Once trust with proprietary education leaders has been earned, regulators will be more likely to set

aside ideology when solving for challenges relating to America's most vulnerable student populations. Likewise, this advice is also applicable to leaders in higher education who are in positions where toxic leadership could inflict severe damage. Proprietary education, as has been heretofore demonstrated, has had its share of toxic actors. Yet, exactly how to adequately address this becomes difficult. As Participant Four stated, "In their zeal to try to shut down, or stop the institutions that they perceived as bad actors, it was all done without any regard for the best interests of the students attending those institutions." Educational leaders and regulators jointly share the burden of regulatory compliance and institutional sanctions up to and including closure when standards are not adhered to. This is particularly important when considering the impact that institutional disfunction has on students who have put their faith in, and aligned their futures with, the promise of a better career through higher education. Participant Six made the following point in this regard:

Are the students being served? Are they getting a good education? Do the outcomes demonstrate that? And are the resources available to the student to provide the support necessary for them to persist, to graduate, and to fulfill the purpose for why they came to the institution in the first place? The fundamental premise being, if all those boxes are checked, I'm not sure we care that much what happens thereafter. He continues by pointing out that, "These [Duncan Era] regulations move beyond that. They go after things that are not in [the institution's] control, and therefore have created problems for the sector, and get in the way of us serving students."

As Participant Six and other participant leaders argued, provided students are being adequately served, which would require fiscal soundness of the institution as well as

provisions for reasonable completion pathways, attempts to hold institutions to standards beyond this run the risk of creating obstacles. The researcher is in agreement with Participant Seven, who stated, “it really has been the whole back and forth between Republicans and Democrats and the whole bipartisan issue and they have to stop that right away.”

Under bitterly partisan conditions, it is asking a lot to recommend that regulators and proprietary education leaders recognize that there is “a more appropriate grail to be sought” (Lipman-Blumen, 2005, p. 249). If ever there were an opportunity to test the abilities of partisans to “take up the immense cause of the Other” and “inevitably learn to lay down the smallness of ourselves” (Lipman-Blumen, 2006, p. 254) through a shared leadership burden, this would certainly qualify. Federal regulations serving as barriers for low income and minority students in their pursuit of higher education options (Appling, 1993) is not a course that should continue. It is therefore key, as heretofore argued, to meet on perhaps the only intersection of common ground where all stakeholders agree that a problem is apparent: namely higher education access for low-income and minority students.

However, as this chapter has argued, the place to start is at the institutional level. As Barton & Geger (2014) along with Greenleaf (1977) have suggested, leaders must cultivate a culture of empowerment at their institutions and demonstrate true care for campus personnel. Higher education can in some respects feel mechanical. In proprietary institutions some functions such as admissions and financial aid advisors are deeply constrained due to regulations in how they can engage with students and perform their primary tasks. As a former admissions advisor, it seemed that for three years my career

was in a “rinse, wash, repeat” cycle that seemed never ending. Each day was a repeat of the mechanics as well as the high-stress and pressure placed on the role by the institution. Investing in ways to relieve some of the pressure inherent in these and other roles, including adequate recognition and other perks that are not outside the regulatory boundaries, should be a strategic priority. True empowerment not only includes a positive culture, it also requires the tools and resources to adequately perform one’s job. A periodic audit of functional departments should be conducted at least annually inspecting technology, process, and the team dynamic. If any of these areas are inadequate they place a drag on institutional progress.

It is also important to remember that empowered colleagues are more likely to serve as institutional promoters both inside the classroom and in public. As personnel are empowered, they are more likely to increase the level of discretionary effort applied to their jobs, or laying down the smallness of themselves (Lipman-Blumen, 2006). As leaders extend trust to personnel, they in turn are trusted and the culture of empowerment is amplified. Consequently, student care is elevated. At this juncture, leaders now have a story to tell key stakeholders, particularly public officials. Hearing first-hand experiences from successful students, graduates, engaged faculty, and community employers can be a powerful way to build alliances with regulators and law-makers. As previously stated, leaders should make an active investment in sharing these stories with public officials. In particular a consistent cadence of campus tours by public officials should be common place.

Mayer, et al. (2015) argued that in order to build a relationship of trust, the trustee must possess certain characteristics. They are:

1. Ability, which includes the skills, competencies, and characteristics necessary to influence specific outcomes. In relation to the study this would include the ability to provide educational access and produce quality outcomes for low-income and first-generation minority students.
2. Integrity, which is the trustor's perception that the trustee adheres to an acceptable set of principles. For proprietary education leaders this would at minimum include adherence to regulatory standards and the ability to subordinate the interest of the institution and its leaders to the needs of the students.
3. Benevolence, wherein the trustee is perceived to wish to do good to the trustor. For purposes of this study this would include proprietary education leaders accomplishing good for their students regardless of and in the absence of profit motive (Mayer, et al., 1995).

Developing these characteristics along with the capability to adequately demonstrate them to regulators, will position proprietary education leaders to begin forming relationships of trust. The necessity of this endeavor should be understood as paramount in all recommendations provided in this chapter.

**Recommendation Number Two: Proprietary Education Leaders Take Inventory of the Role their Institutions Play in Educating Low-Income and Minority Students and Labor to Remove Barriers Impacting These Students.**

As previously suggested, stakeholders must acknowledge that students served by the proprietary education sector are among the nation's poorest. Furthermore, it must be acknowledged that low-income and first-generation minority students regularly choose

proprietary institutions and when these institutions are regulated out of business, these student populations generally do not opt to complete their studies at a non-profit or public institution (Kreighbaum, 2019). This fact places a shared burden on proprietary education leadership and regulators. Recommendation number one called for the need for proprietary education leaders to build relationships of trust with regulators in order to remove access and completion barriers for vulnerable student groups. While recommendation number two contains some overlap, there is enough support to classify it as a separate albeit related suggestion that can be synthesized with recommendation number one in order to strengthen the position of the proprietary education sector in the matters of regulatory affairs.

The primary recommendation in this section is for leaders to take inventory of the role they are playing in educating their students and through the relationships they build with regulators work collectively to remove barriers to enrollment and completion, particularly for low-income and first-generation minority students. While several of the Duncan Era Regulations have been dismantled, regulations that are problematic according to the collected data, and the literature review remain in effect. The 90/10 Rule for example, is a regulation attached directly to the Higher Education Act that has proven to be prohibitive to low-income students and the literature indicates that it does not provide any level of benefit to students or taxpayers. It is specifically recommended therefore that the among the aims of the relationships to be forged with regulatory partners is to replace the 90/10 Rule with a mechanism that may have success in reducing default rates and preventing abuse, stated goals that the 90/10 Rule has failed to achieve.

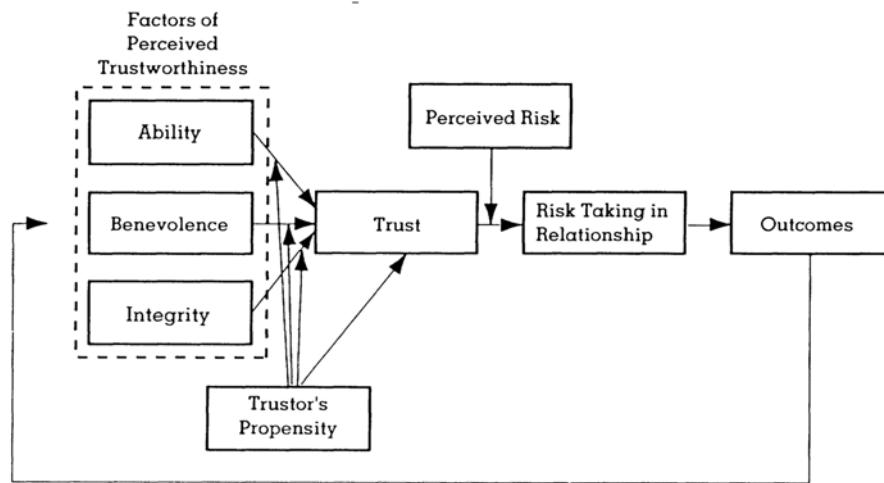
The burden of dispersing this information rests on the shoulders of proprietary

education leaders. During campus tours and amidst success stories from graduates and community employers, institutional leaders have an opportunity to present the literature and point out that regulations like the 90/10 Rule may result in diminished student access to higher education. When a public official visits the campus, a leader might for example introduce them to a handful of successful graduates with positive stories to tell. They might allow them to observe students making progress toward graduation. Visitors can interact and ask questions of faculty members. Before they leave, the representative should walk away with a sound understanding of institutional outcomes, particularly among low-income and minority students. Several weeks later, the leader may call upon that same public official in her office. During this time a brief reminder of the positive outcomes may be in order along with an introduction to the duress that some regulations place on sustaining such outcomes. A thank you email with data to back up these claims may be the next step in a continuous chain of communication and information sharing.

This chain of conscious and cadenced efforts has the benefit of building sustainable relationships of trust with regulators. Mayer et al. (2019) utilizes a model of trust to describe how such efforts lead to lasting trust. It is diagramed in Figure Four below.

**Figure 4**

Model of Trust.



Mayer et al. (2019).

The model suggests that as the proprietary education leader, represented as trustor in the diagram, consistently performs in the areas of ability, benevolence, and integrity, each of which is described in Recommendation One, their propensity to believe that these values are inherent in others increases. In other words, because I possess and behave according to these values, I am more likely to reason that others possess and behave according to these values. Consequently, trust in others increases. With increased trust in others, in this case regulators, proprietary education leaders will according to this model, be more willing to take the risk of rendering themselves vulnerable while building relationships of trust with regulators. The key of course is running institutions with ability, benevolence, and integrity. According to Mayer et al. (2015) there are no shortcuts or substitutes for these characteristics if the trust of regulators is to be earned which fortifies the argument made throughout this chapter that the burden is on proprietary education leadership to run exemplary institutions if the path forward is to be forged.

*Support for the Recommendation*

As illustrated in the literature review, during the Duncan Era debates, it was estimated that approximately 33 to 44 percent of proprietary education students would be displaced with no academic alternative if the regulations were to take full effect (Fain, 2014; Guryan & Thompson, 2010). Kreighbaum (2019) added credence to this prediction demonstrating that five years later a very low percentage of students whose institutions have closed actually transferred to another school. For example, only one percent of students enrolled in Argosy University and other defunct Dream Center institutions transferred elsewhere (Kreighbaum, 2019). Additionally, only 5.6 percent of students from Education Corporation of America, who at their peak had 31 campuses, have transferred to another institution since their closing in 2018. Only 3.1 percent of students from Vatterot's 16 campus system have continued their education at another institution (2019).

The low transfer rates from closed proprietary institutions is in part due to the preferences of the demographics who make up private sector education students (Fain, 2014). It is also due to the limited vocational programmatic offerings at traditional colleges. Estimates indicated that only 12 percent of students who enrolled in proprietary vocational programs, and only 18 percent pursuing associate degrees, have alternatives within their localities (Guryan & Thompson, 2010). While traditional higher education students may be willing to relocate for their education, the primary demographic of those attending many proprietary colleges are among the most disadvantaged students, including low-income working adults with one or more children thereby limiting their mobility (Iloh, 2016). As stated previously in this chapter, students attending proprietary

institutions make \$8,000 on average less per year than students attending community colleges (Farrell, 2003; Appling, 1993).

As indicated in the Chapter Two Literature Review, the California Center for Population Research of the University of California at Los Angeles (2005) argued that minority and low-income students choose proprietary institutions over community college due to programmatic offerings leading to employment, particularly in areas where community colleges are serving as feeder institutions to four-year colleges and universities, suggesting conscious choice as a motivation (Celini, 2005). Likewise, Farrell (2003) and Karmel (2004), cited the writing of David L. Kirp, professor of public policy at the University of California Berkeley, who argued that proprietary colleges provide advantages to low income and minority families who often prefer academic experiences leading to immediate career advancement and higher income as opposed to spending several years in the world of ideas (Farrell, 2003). Thomas G. Mortenson, senior scholar at the Pell Institute for the Study of Opportunity in Higher Education argued that the typical college experience of dorm life or enjoying a semester abroad is not a luxury that many minority and low income students have an interest in. Rather, they are seeking the fastest path to earning better income as opposed to enjoying an academic experience with the faith that a career will fall into place someday (Mortenson, 2000).

Exchanging this information both verbally and in writing with public officials and policy makers is likely to pay better dividends than waiting for a regulation to be proposed and then reacting to it. Furthermore, the likelihood of these officials adequately responding to this information will according to Mayer et al. (2015) increase exponentially if trust is

established.

Even those opposed to proprietary education should ask the question, “if low-income and minority students should not be served by proprietary institutions, then who should serve them?” A common answer is “community colleges or public universities.” The question then becomes complicated as one asks “what must change in order to address student preference?” Perhaps more a more important question to ask is, “who is even qualified to make such a decision?” Low-income students, particularly first-generation African American students, haven chosen for themselves to attend proprietary institutions; is there someone more qualified than the individual student to make that choice for them? While individuals are certainly capable of making episodic mistakes in educational choices, it is difficult to imagine a scenario where someone has the ability to systemically make better choices for entire groups of students comprised of millions of individuals. The further one continues with this line of reasoning, the further from a reasonable solution one arrives. Making narrow decisions for students, and diminishing enrollment choice, whether it is low-income, first generation minority students, military, VA, international, or any other student community, is a business that regulators do not have the capability to adequately control for and should therefore abandon such projects.

It is the researcher’s recommendation that proprietary education leaders build relationships with regulators in order to take up the project of servicing low-income and minority students as a starting point for reasonable regulation. Allow these and other non-traditional student bases to choose the institutions best suited for their career goals, be they proprietary institutions or community colleges and work to remove regulatory barriers that have historically proven to impede higher education access. The

dissemination of this data by proprietary education leaders is the starting point and such data is best absorbed when relationships of trust with public officials is cultivated.

The second concern is how to address poor success rates at public community colleges or four-year degree granting public institutions who service low-income and minority students. The Century Foundation, in a report by Kahlenburg et al. (2018), made a reasonable case for adequate funding for community colleges, something they argue is presently lacking. They made this recommendation primarily to ensure that low-income and minority students will have a better range of higher education access. The report argued:

As institutions that serve all students regardless of background and preparation and are located close to where students live and work, community colleges are pivotal in efforts to reduce economic inequality and restore the American Dream—but can only succeed if they are adequately funded.

The report further stated:

“Adequate funding” may not have bumper sticker appeal. But the idea is simple and compelling: To help restore social mobility in America, policymakers must provide community colleges the resources necessary to successfully educate the country’s aspiring middle class (Kahlenburg et al., 2018).

The study also notes that:

While more than four out of five first-time beginning community college students say they wish to earn at least a bachelor’s degree, only about one out of thirteen students transfer and complete this goal within six years; moreover, only about a

third of students earn even just a certificate or associate's degree from the community college (Kahlenburg et al., 2018).

The researcher applauds attempts to create more educational access for low-income and minority students, regardless of the sector, and support Robert Shireman and his associates on this particular cause. Yet, as their report states, "Currently, the performance at resource-strapped community colleges is often disappointing" and "Individuals who are trying to better their lives and move out of poverty into the middle class rely on community colleges, yet these schools frequently are not able to provide students with the support they need and deserve" (Kahlenburg, et al., 2018, p.1). The Century Foundation's call for better funding and infrastructure in order to support low-income and minority students would not be necessary if community colleges were adequately servicing them at present. The researcher applauds the mission to change this, but recommends that until this problem is addressed, which may be several decades in the making, the Century Foundation, and similar activist organizations cease efforts to undermine proprietary institutions, who do at present, complete minority students at higher rates than community colleges (McCluskey, 2014).

St. John et al. (1995) determined that not only are minority students more likely to choose proprietary schools, African American and Hispanic students attending proprietary schools persist at higher rates than African American and Hispanic students attending college in other postsecondary environments (St. John et al., 1995). Along with Wilms et al. (1987), they were among the earliest producers of literature arguing that the elimination of proprietary schools may reduce academic opportunities for vulnerable

student populations and families with limited financial resources (St. John et al., 1995; Wilms et al., 1987).

The differences are even more pronounced when looking at two-year institutions, who are held to program completion under 150 percent of the required program completion time. African Americans attending proprietary institutions graduate within this time frame at 53 percent compared to 11 percent at public institutions (McClusky, 2014). Participant Three believes that in general, community colleges do not serve low-income and first-generation minority students at appropriate levels:

In my opinion, I believe that it's impacted that those populations dramatically and largely because I firmly believe [proprietary institutions] excelled in serving them. They're not populations that were well served by community college or by a large class sizes or by a traditional experience.

Participant Five also believes that the proprietary sector does a better job at serving low-income and first-generation minority students. He argued “The reason why they come here is people know us to be a little bit more concerned about the individual student than [public schools] where they just they just fall through the cracks. They are not good at programs for first gen minority students.” Expressing similar concerns, Participant Three shared the following story:

I remember very clearly when we were meeting with different student groups talking to them about what Gainful Employment could mean. And it could mean, you know, the program or closure of schools, and just helping them to understand the impact. I remember it vividly because a student in the back of the room stood up and she's like, ‘where do I go now?’ She had been other places. She had

already left places where she couldn't be successful. She was finally feeling successful and she's like, 'where do I go now?'

The work of Shireman (2018) and his associates demonstrate sincerity in wishing to see community colleges better funded in order to serve low income students. And, while out of the scope of this study, the researcher would stand with them in this uphill battle. However, if not careful, The Century Foundation, in its zeal to increase the regulatory burden of proprietary institutions, who, as acknowledged in their own report, service more students in the bottom 20% of income earners, than any other sector of higher education (Kahlenburg et al., 2018), runs the risk of losing credibility. Why acknowledge on one hand that community colleges are, in general, ill-equipped to serve low-income students and then widely advocate for policy, that in the words of Participant Six, have forced proprietary institutions to "shy away from students who may be disadvantaged in some way." Participant Four asked "I mean where else can these students go?"

Participant Seven noted:

For the lower socioeconomic students, the more vulnerable students, the minority students, [proprietary institutions] have been serving them for years and years and years and have been a terrific answer to some of those students who cannot get into traditional higher education institutions. So that sort of went away and now these students are not being served, they're not choosing to go to traditional colleges, they just aren't going anywhere." In contrast she notes "minorities, particularly adult minority students and you look at the outcomes and what happens when they go to a community college. It's abysmal!

While reforming the community college system is a worthwhile pursuit, the academic needs of low-income and minority students cannot be kicked down the road for several more decades until such a lofty goal is accomplished. For this key reason, the researcher is suggesting that proprietary institutions must remain a key part of the solution and regulators would do well to acknowledge this. Participant Eleven elaborated on this point by sharing:

There are plenty of regulations like Title IX that apply to everyone and its clear to me that when these types of regs are put in place, that those behind them actually want to solve a particular problem. But time after time it becomes clear that when it comes to us, they're only interested in slowing the for-profits; not helping students, because if that were the case, then they would be committed to removing regs that impede college access, removing regs that make it impossible for us to service students in the best way.

As previously noted is recommended that proprietary education leaders build relationships with regulators and work to dismantle present and future regulatory measures that limit educational access and completion pathways for low-income and minority students. This would include dismantling policies such as the 90/10 Rule that only serve to injure or slow the abilities of proprietary institutions to service low-income students (Guida Jr. & Figuli, 2012; Appling, 1993) and seeking mechanisms that will accomplish the stated goals of the 90/10 Rule. It should be noted however, that this is likely to be an uphill battle. Participant Two for example expressed that he worries the state by state regulatory reform efforts of the Century Foundation and other activist

groups will make it even more difficult to service low-income students and the challenges would extend to military and VA students.

Shireman has been fighting to include VA and military funds in the 90/10 ratio. If that happens, we would cap our enrollment. You know, we would accept the first hundred VA or military students in or whatever, you know, and then we would cap it. Yeah, not only low-income students but servicemen and women would be limited in their educational choice. And, in this state, there are no nonprofit options. I think this is why students chose schools like ITT in the first place because the government school options wouldn't work.

As indicated in the literature review, the 90/10 Rule has a long history of being improperly interpreted and data surrounding its effectiveness has for decades been misinterpreted and misused (General Accounting Office, 1999). A study commissioned by and produced by the United States General Accounting Office, suggested that the 90/10 Rule had not improved default rates and even by increasing the ratio to an extreme 45/55 Rule would only impact default rates by 3% (General Accounting Office, 1997). The study also concluded that if such a dramatic ratio shift were to take place it would likely "cause schools to make changes, such as admitting fewer low-income students" and "might compromise student access to postsecondary education" (General Accounting Office, 1997, p. 3). Yet in the light of the data suggesting that the 90/10 Rule is ineffective, opponents of the sector such as Letteney (2004), have attempted to argue before Congress that the rule is effective but "the abuses that have been prevented by it cannot by definition be documented" (The College Access & Opportunity Act, 2004). Arguing before Congress that although by definition the success of the 90/10 Rule cannot

be documented, yet it is somehow nonetheless effective, seems problematic to the researcher. It would appear that advocating for a regulation, in spite of ample evidence demonstrating the Rule's ineffectiveness, while simultaneously failing to produce any evidence in favor of the argument, is a naked illustration of the partisanship driving the divide between opponents and proponents of the proprietary education sector.

Participant Two believes that federal regulations like the 90/10 Rule make it difficult to service populations that require student loans to complete school. He felt that the metrics introduced during the Duncan Era, if enforced, would have exacerbated an already difficult situation. He stated:

First generation college students in general struggle with many of the metrics, such as loan repayment. You know, it's disproportionate. Institutions were forced to consider during the Duncan Era implementing policies that would kind of be quasi prejudicial. For instance, I could prevent any problems with Duncan Era regulations by requiring all students to pay a cash deposit \$1,000. That would screen everybody that would likely not be able to repay their loans. So, on one hand we would meet the regulations, but on the other hand, we would then be a school for rich kids.

Participant Six shared that his institution has already had to make difficult decisions and shared that due to the penalties associated with regulatory failure his "institution is forced to shy away from students who may be disadvantaged in some way or perhaps not have the best academic preparation leading into higher ed."

What the participants are referring to is the difficulty in meeting a ratio which requires that less than 90% of an institution's tuition revenue come from non-Title IV

funds. In other words, at least 10% of tuition revenue must come from sources other than federal student loans and grants. When an institution is serving a high population of low-income students who rely on federal aid to cover the cost of their education, it is unreasonable to expect 10% of student tuition revenue to come from out of pocket cash payments. One way to comply with the 90/10 Rule is to set tuition costs in excess 10% above the annual Title IV allotment. While this satisfies the ratio, it becomes prohibitive to low-income students who are generally incapable of paying 10% or more of their annual tuition from other means besides loans and grants. As discussed in the literature review, activist groups such as the Century Foundation are approaching state legislatures and departments of education in an attempt to include state grants, military and VA funds in the numerator while also arguing to lower the ratio to 85/15. If such measures were successful, only students who have the resources to pay more than 15% of their tuition via resources other than government funding would be able to attend proprietary programs thereby eliminating educational access to countless low-income students (General Accounting Office, 1997).

Given that the 90/10 Rule has not made a significant difference in the improvement of cohort default rates and that even dramatically stricter variations of the ratio are not likely to help but rather hinder education access for low-income students (General Accounting Office, 1997), and no way to document the abuses claimed to have been prevented by the rule, it is difficult from a research standpoint to validate any literature arguing for the necessity of the regulation. It is therefore prudent for policy makers to consider alternative approaches to reducing federal loan default rates and eliminate the 90/10 Rule due to its failure to achieve its stated purpose.

### ***Potential Barriers and Obstacles***

As indicated in the literature review, the 90/10 Rule, first introduced by Congress as the 85/15 Rule, was written into the reauthorization of the Higher Education Act (Phipps et al., 1999). Consequently, an act of Congress would be required to absolve the 90/10 Rule. Despite widely circulated data from the United States General Accounting Office demonstrating that the rule was flawed and does nothing to curb student loan default rates (General Accounting Office, 1997; General Accounting Office, 1999), and reports from the United States Office of the Inspector General showing that the data used time and again by congressional supporters of the 90/10 Rule is wildly inaccurate (OIG, 2003), the rule has survived numerous reauthorizations of the Higher Education Act. Furthermore, Community Colleges have taken a strong interest in ensuring the 90/10 Rule remains in place. As listed elsewhere in this study, Alice Letteney (2004), representing the American Association of Community Colleges testified before Congress that the rule is effective but “the abuses that have been prevented by it cannot by definition be documented” (The College Access & Opportunity Act, 2004). Despite having no lived experience trying to lead an institution required to adhere to the 90/10 Rule, and no description of the abuses prevented by the Rule, Letteney and the American Association of Community Colleges have remained advocates for the Rule.

### ***Implementation of the Proposed Solution***

While it is frustrating to consider that empirical data has been largely ignored and claims of phantom abuses are considered valid congressional testimony, proprietary education leaders must acknowledge that they have an uphill climb when trying to convince both Congress and traditional educators that the 90/10 Rule should be

abolished. Yet, acknowledging the realities of this challenge and adequately finding ways to address this issue at the core, namely a reauthorization of the Higher Education Act, is the only way to remove this barrier.

Participant Three highlighted a consistent thread found in the study recommendations. She argued that one way to mitigate the politics involved is to have policy makers visit an institution and see first-hand what the institutions are offering: “If I’m a regulator, or a politician, I’ve got a visit the school. If I talk directly to students in the environment, attend a graduation, I’ll have a clear idea what’s actually going on.” As stated throughout the recommendation section, the proprietary education sector must do a better job, both at the local grass roots and national association levels to better educate members of Congress and other key public-officials on their successes and challenges. While building the relationships necessary presents a significant challenge to proprietary education leaders, working on behalf of the higher education needs of low-income and first-generation minority students, likely the only area where all parties might find common ground and cannot be accomplished without adequate trust between stakeholders. Along with tours and demonstrations of campus activity, it is recommended that proprietary education leaders arm themselves with sound data demonstrating the role they are playing in educating local and national populations, particularly the nation’s poorest student groups. Furthermore, it is recommended that proprietary education leaders demonstrate how regulations like the 90/10 Rule limit higher education access and completion for low-income students. While the political arena can be difficult, it has been the experience of the researcher when discussing these matters on a personal level, even with Arnie Duncan himself, that individually, those in the political arena care about

their constituents and alliances can be formed when the conversation is framed adequately.

To aid in the discussion process, leaders might consider developing a thorough whitepaper illustrating key performance metrics of their institution. Keeping this data on hand may prove useful in facilitating on-point discussions during campus tours and will provide policymakers and staffers collateral regarding key educational outcomes of their constituents. Many of the research participants noted that they have dedicated compliance staff members while others utilize executive leaders to lead efforts to meet regulatory standards. It is recommended that campus leaders utilize one or more of the staff members on point for compliance to develop and maintain their institutional KPI whitepaper.

According to Kolowich (2019), an effective whitepaper:

- Should be fewer than six pages in length.
- Structured with a title page, table of contents, executive summary, an introduction, and three or four pages of content illustrating institutional KPI's, the solutions the institution is providing, and other relevant information sources.
- The data should be dense. Kolowich (2019) suggests that the reader should generally need to review the whitepaper more than once in order to absorb the content. Charts and graphs should be provided to assist the reader with context and to help illustrate the data in a digestible format (2015).

In addition to these suggestions, it is recommended that the institution seek to understand some of the broader challenges facing their communities such as unemployment rates,

minority access to higher education, and industry labor needs in order to illustrate how their institution is working to be part of the solution. As policy makers and public officials understand the broader role that a particular institution plays in the community, proprietary education leaders are more likely to be viewed as an ally as opposed to a problem in need of more regulation. In the words of Participant Three, whitepaper data may assist officials with a “clear idea what’s actually going on.”

In addition to institutional whitepapers, it will be useful for sector leaders to take advantage of work being done by state and national associations including sector wide data that is available in whitepaper format. Organizations such as Career Education Colleges and Universities (CECU), produce a variety of resources including whitepaper data on a range of regulatory and legislative challenges. They provide toolkits that can be shared with public officials as well as detailed breakdowns of potential legislative and regulatory measures deemed by CECU as potentially harmful to the sector and its students.

What seems to be missing from the advocacy of CECU and similar organizations at the state level is an organized effort to demonstrate the inefficacy of the 90/10 Rule. Member institutions would do well to work with these associations to develop grassroots campaigns working with elected officials to demonstrate the impact that this rule has on low-income and first-generation minority students. This study along with the relevant literature utilized herein, provides a starting point from which leaders can begin to develop whitepaper data to aid in this endeavor.

**Recommendation Number Three: Utilize a Values Hierarchy and Common Values Alignment in Order to Facilitate Productive Policy Discussions with Regulators.**

The conversation regarding proprietary education policy would be strengthened if all stakeholders understood at the outset their ideological positions when advocating their respective solutions. This enhances a stakeholder's ability to ascertain obstacles as well as solutions to complex policy challenges. As demonstrated elsewhere in this study, a range of ideological and political positions are at play along with an array of motives. As stakeholders make their positions clear, it is likely that most will be hierarchically subordinate to advancing higher education access and completion for low-income and first-generation minority students. To aid in this process, proprietary education leaders should work to demonstrate that federal regulations introduced barriers for some low income and first-generation minority students (Appling, 1993; House Committee Hearings H.R. 4283, 2004) and regulators should, in the interest of these student populations, depoliticize proposed solutions.

This section will provide support for the recommendation drawing upon the study data as well as supporting literature. Among the potential obstacles identified are special interest groups such as the Century Foundation who are actively advocating for a strengthening of certain Duncan Era Regulations along with a more aggressive 90/10 Rule on a state by state basis. The Common Values Alignment theory developed by the researcher will also be presented as a tool to implement this particular suggestion.

***Support for the Solution***

Another benefit to building working relationships with regulators is the increased likelihood that a regulatory climate of trust can be established. As trust increases, the

negotiated rulemaking process can be enhanced by encouraging stakeholders to communicate their ideological positions up front in, rather than trying to maneuver around them during negotiations for fear of losing political ground. For example, groups like the Century Foundation and Bob Shireman should be candid if their attempts to strengthen the 90/10 Rule, by including military aid and reducing the ratio to 85/15 (Ochinko, 2017), are an attempt to reduce the profitability of proprietary institutions. However, if the aim however is to curb student loan default, the stated purpose of the regulation, then this acknowledgement provides proprietary education leaders who have labored to build relationships of trust with regulators the opportunity to demonstrate that the rule has little to no effect on default (General Accounting Office, 1997) and stakeholders can explore alternative avenues to pursue this aim. Otherwise, strengthening the 90/10 Rule and diminishing access to low-income and minority students creates an optics problem for the Century Foundation's call for educational access for low-income students (Kahlenburg et al., 2018). Such ideological ambiguity is prohibitive to solving for these challenges. As the previously cited Century Foundation report indicates:

The prevailing impulse by policymakers in response to poor results is to impose accountability mechanisms on them. For instance, a number of states have shifted toward systems that fund institutions based in part on student progress. But these approaches are unlikely to be effective unless colleges have the resources necessary to provide quality instruction and support, given the needs of the students who typically enroll (Kahlenburg et al., 2018, p.1).

The Century Foundation's calling for increases in the potency of regulations such as the 90/10 Rule and advocating for their adoption on a state by state level, knowing that

violations would result in loss of Title IV funding in light of the above quote, might invite skepticism of their motives. Readers may be suspect of a call on one hand to increase access for low-income and minority students, while on the other hand, actively working to place barriers between these students and many of the institutions they actively choose to attend.

With Robert Shireman formally leading this charge on behalf of the Century Foundation, and having previously served as Undersecretary of the U.S. Department of Education responsible for crafting most of the Duncan Era regulations, it is understandable that the participant leaders questioned the ideological motives of the Department. Participant Seven for example recounted that she was present during some of the early discussions when employees within the United States Department of Education were first discussing heightened regulation of the proprietary education sector. She recalled:

I was in meetings with the Department of Ed people during that time. And the way they spoke about the for-profits in 2013 and 2014 was just atrocious. They were bashing them right and left and saying that ‘we're going to get them.’ These were Department officials! Department officials were actually saying that their whole intent was to get rid of ‘those for- profits.’

Claiming to witness a similar phenomenon, Participant One shared his perceptions of the architects of the Duncan Era regulations stating that the initial aim:

...was just shocking! Stunning to me! That that the folks who promulgated the regulations actually didn't care. It was so blatantly, transparently, ideological that it shocked me! You know, I would have thought that they would have put a little

bit more intellectual rigor into the argument just so that they didn't look like total ideologs.

To offer evidence of this claim, Participant One pointed out: “They actually went so far as to carve out public and not for profits from the regulatory language. Why the hell would you do that if you believe the principle matters?”

According to the data, several of the study participants are in agreement with the Century Foundation that it is difficult to comply with many of the federal regulations without the funds to do so. Participant Number Five for example argued, “The Duncan Regulations are expensive to comply with.” Participant Two quantified the expense for his institution stating “We probably spend 30% of our revenue making the government happy.” Compliance, according to the participants, creates a strain on monetary resources and campus budgets require a significant investment in people, process, and technology in order to demonstrate compliance. Participant One pointed out that:

Institutions with a for-profit tax status have to spend significant amounts of effort and money just tracking drawdowns, distributions, and returns down to the dollar, right? And they have to track, you know, LDA’s (Last Date of Attendance) to the day. And then they have to ensure that the returns took place within a certain deadline after LDA was determined. None of that happens in the public sector, right? They don't even track it! So, if you talk about ways in which the Duncan Era Regulations have affected higher education in the for-profit sector, I think one clear area is just the expense.

As the Century Foundation report notes, regulatory “approaches are unlikely to be effective unless colleges have the resources necessary to provide quality instruction and

support, given the needs of the students who typically enroll (Kahlenburg et al. 2018). As demonstrated throughout this study, proprietary institutions enroll students with even lower income than community colleges (Farrell, 2003; Appling, 1993) and as the study participants argued, compliance with the existing regulations is a drain on resources. One must question therefore, in light of their own argument, why are such interest groups broadly campaigning for a dramatic increase in an already hyper regulated sector.

### **Potential Barriers and Obstacles**

In the quest to regulate the proprietary education sector, it is adherence to partisan and ideological dogma over utility, on both sides of the debate, that has, been most troublesome in achieving balanced regulation of the sector. Both opponents and proponents of the sector, as the literature review demonstrates, have misrepresented (or at least misunderstood) critical data in their respective championing of their ideology during policy discussions, including how to service low-income and minority students. When this happens, particularly at the fringes of both opposing sides, these vulnerable student populations, and by extension the nation at large, can be injured.

It is not simply that the proprietary education sector has detractors, rather the obstacles appear to be rooted in an unwillingness or inability of the stakeholders to adequately articulate their ideological positions. Reasons for this may be fear of retaliation or belittlement of one's belief by the opposing sides, lack of confidence in one's position, or deliberately withholding one's objective believing that this will provide some level of political or economic advantage. Additionally, the "the fear of repercussions" (Lipmen-Blumen, 2006, p. 133) as described elsewhere was apparent when speaking to some of the leader participants. Participant Two pointed out that a true

fear of regulatory retaliation exists stating “it’s dangerous for us to put our neck out.” He also recalled “those times that we were getting hammered by the Department and others.” Some research candidates declined to take part in the study out of concern that their anonymity might be compromised and their institution would be retaliated against. For these reasons and others, it is key for stakeholders, even when divided upon policy, to seek common values.

### ***Implementation of the Proposed Solution***

One recommendation to help bring balance to this partisan and ideological tug-of-war is to establish a hierarchy of values in which the ideological positions of each stakeholder can be compared and contrasted. While hierarchies in and of themselves are value neutral, neither good nor bad, they can provide a framework allowing for a perceptible ordering of societal, group, or individual values, which may be beneficial in problem solving. Witesman and Walters (2015) have done considerable work in examining how values hierarchies may be implemented among public administrators. They cite Schwartz and Bilsky (1987) who provided a five-tiered definition of the term “values” particularly as it relates to public administration. The tiers are:

1. Concepts or beliefs;
2. Desirable end states or behaviors;
3. As transcending specific situations;
4. Guide selection or evaluation of behavior and events, and;
5. Are ordered by relative importance, in other words structured via hierarchy

(Schwartz & Blisky, 1987, p. 551).

According to Whitesman and Walters (2015), most public administration literature dealing in values attempt to approach the topic from a non-hierarchical viewpoint, which at an organizational level may be more representative of how organizations function. However, Whitesman and Walters (2015) also acknowledge that an extensive base of psychological literature exists indicating that individuals in contrast, do base personal decisions against a values hierarchy. For example, when offered an employment promotion, one may consider if the additional time away from family and leisure is a worthwhile tradeoff for an increased salary and career growth. One implication is that in the absence of an organizational values hierarchy, decisions will be made based on individual values which may or may not entirely harmonize with organizational objectives.

It does not seem apparent that a mechanism exists to determine the precise juncture where the values hierarchies of the individuals comprising an organization fuse into the values and actions emulated by that organization. However, it does seem apparent that executive leaders should play a key role in developing institutional value hierarchies and then socialize the practice of measuring decisions against them. This may help to mitigate the problem of individual values influencing the strategic direction of the organization into unhealthy directions. A mid-level manager, for example, might believe it is in the best interest of the organization to alleviate some personal discomfort inherent in their role without an informed understanding of how this agenda might impact the health of the organization. The same may be said of public administrators. An organization such as the U.S. Department of Education is comprised of thousands of public servants from an array of personal viewpoints and values hierarchies. Yet the

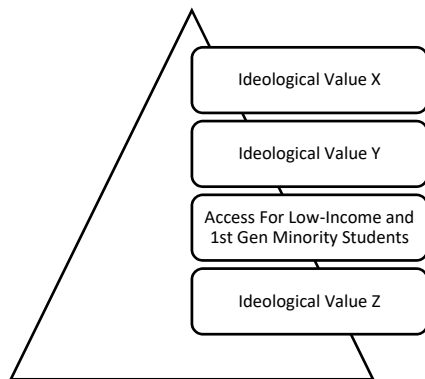
Secretary and other influential leaders will generally establish the values of the department during their personal tenures in order to drive the executive agenda.

With the understanding that values hierarchies are employed at the individual level, Witesman and Walters (2015) produced a study indicating that value hierarchies may be useful tools in predicting the decision-making outcomes of individual policy makers. Their study concluded that predicting outcomes when a values hierarchy is present is more accurate than predications in the absence of such hierarchies (2015). In harmony with this recommendation, Witesman and Walters (2015) admit that no universal hierarchy of values exist, however in context specific settings, which for purposes of this dissertation could be interpreted to include specific regulatory measures, values hierarchies do increase the predictability of public decision makers.

The chief solution for Recommendation Number Three is the implantation of what the researcher has titled “Common Value Alignment Theory” which suggests proprietary education leaders and other stakeholders, in addition to public administrators, develop and remain mindful of their institutional values hierarchy. For example, in establishing a values hierarchy, a particular stakeholder might determine where higher education access for low-income and first-generation minority students lie in relation to other values in the hierarchy. Figure 5 below represents a hypothetical values hierarchy with a vertical access structure. The closer to the top of the hierarchy, the more priority an organization gives to a particular value.

**Figure 5**

Values Hierarchy Diagram.

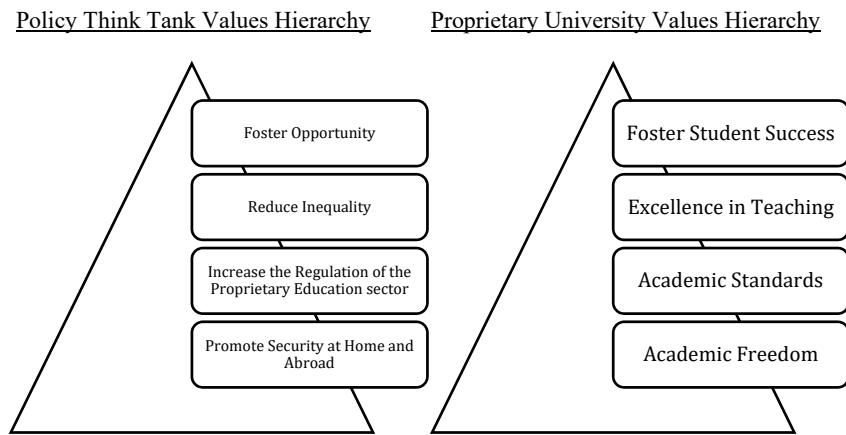


In this instance, value X and value Y, would occupy a higher position in the hierarchy than higher education access for low-income and first-generation minority students. Consequently, the above hypothetical stakeholder is likely to prioritize value X and Value Y in policy scenarios such as rulemaking where negotiation is required. If the ideological values X and Y are disclosed, other stakeholders will have an easier time engaging in policy dialogue and increase the speed of negotiation towards the necessary compromise. Witesman and Walters (2015) noted that measuring decisions against a values structure serves as a safeguard for public policy decisions that may otherwise produce adverse social outcomes. For example, policy makers may make a decision that proves to be administratively efficient. Yet without a values hierarchy in place, policy makers in this incident run the risk of potentially jeopardizing one or more social values deemed publicly superior to administrative efficiency in the hierarchy.

The following diagram represents a hypothetical policy thinktank and a proprietary institution for illustration sake. While the specific values are taken from actual organizations, they are meant to serve as a generic hypothetical model:

**Figure 6**

Comparative Values Hierarchy Diagram.

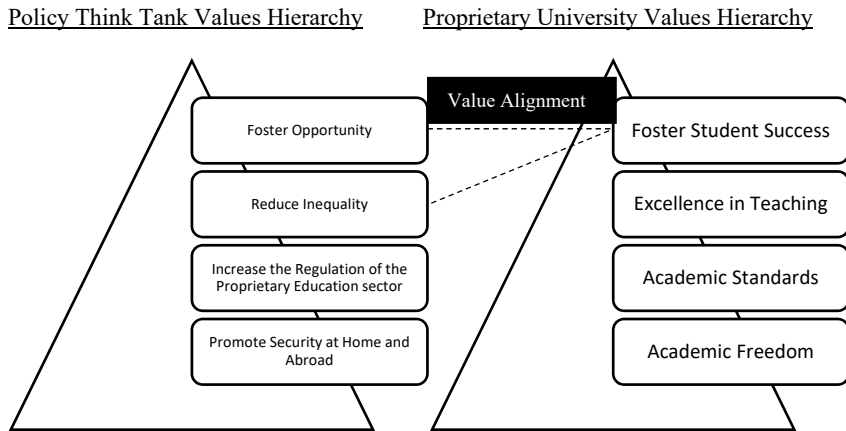


As indicated in the hypothetical policy think tank hierarchy, increasing the regulation of the proprietary education sector is subordinate to fostering opportunity and reducing inequality. In this particular model, these two stakeholders can unite during rulemaking or other policy forums under what the researcher defines as “Common Value Alignment.” In other words when two or more parties hold a particular set of values at or near the same hierarchical position relative to their respective organizations, opportunity exists to align on those specific values. This alignment is more likely to result in a level of compromise during negotiations that is acceptable to all stakeholders sharing a given value or set of values. Therefore, as a regulation is introduced, such as the 90/10 Rule, which may limit educational access to certain programs for low-income students (General Accounting Office, 1997), the Policy Think Tank can determine from their values hierarchy that while they value regulating proprietary education, that this particular value is subordinate to fostering opportunity and reducing inequality. Therefore, the Policy Think Tank and the University can agree upon grounds of Common Value Alignment to

reject or amend the proposed regulation with more favorable elements for low-income students. This is illustrated below in Figure 7.

**Figure 7**

Common Value Alignment Diagram.



On the surface implementing such a practice may seem impractical and perhaps such an attempt would prove to be complicated. However, Witesman and Walters (2015) synthesized a number of works relating to public administration in order to demonstrate that the use of values is an empirical reality in policy making. It is also normative practice. Policy makers work through a range of value conflicts inflicting multiple stakeholder groups on a regular basis (2015). The administrative process by nature requires policy makers to consider the facts as well as the values associated with implementing public solutions (Rutgers, 2008). Having the ability to arrange these values in a hierarchy may serve as a tool in which to negotiate in good faith with organizations such as proprietary institutions that may be subject to the regulations being proposed. Witesman and Walters (2015) were able to demonstrate that this is possible under certain conditions. Their study concluded that a subset of public values can be derived from the seemingly disparate values held by individual stakeholders comprising a public body or

what is often referred to as the broader constellation of values among public administrators. This can occur when values are relevant to the specific issue at hand, for example the value of reducing inequality as illustrated in Figure 6 can be in play when higher education policy such as the Gainful Employment Rule is on the table. In this instance policy makers would layout the desired consequence of this rule such as the noble aim of reducing student loan debt. They must also have the courage to explore other consequences such as the closing of institutions who fail to meet the stand and thereby potentially reducing access to higher education in some areas. The question can then be asked “what impact might these potential consequences have in terms of reducing inequality?” The next question might be “Is reducing student loan debt a better avenue to equality than increasing access to higher education?” In this context, the conversation requires careful thought and becomes more meaningful than exchanges of partisan rhetoric that often fill the arena of negotiated rulemaking. To tackle complex human problems, it is required that leaders move beneath surface level arguments and political platitudes in order to converse with precision and clarity. Fullen (2019) argues that leaders must learn to navigate nuance if sustainable solutions are to be found. Dealing in nuance is not the same as getting bogged down in the technicalities of the conversation, particularly when these conversations are steeped in political or ideological dogma. Rather those who possess the skill to navigate nuance understand how to bring about change while keeping core values intact. This requires a level of understanding of the technical aspect of problems, including the politics involved. However, these technicalities that are so often interpreted as the entirety of the picture must be seen as only one element of the larger challenge. Those who cannot learn to operate beyond

surface level technicalities are often satisfied with superficiality and therefore run a high risk of failure (Fullen, 2015). A values hierarchy is among the tools that leaders can use when solutions require dealing in nuance.

Before proceeding to the next level of Common Value Alignment Theory, it is prudent to pause and identify both the practicality of the theory and the importance of its philosophical underpinnings. At the outset, it should be noted that not every organization has a defined set of values and not all organizations will have an interest in participating in such an exercise. Furthermore, it becomes even more difficult to define one's values when a very narrow element or subset of an institution's operation comes under regulatory scrutiny. Values, according to Witesman and Walters (2015) may be therefore be fluid in their hierarchical arrangement depending on the context of the problem at hand. For example, if a proposed regulation of increasing VA student housing allowance is on the table, low-income and first-generation minority student access may be hierarchically subordinated to the needs of veteran students in that moment; recognizing of course that there may be overlap between both student groups. As with the other recommendations in this chapter, these challenges can be mitigated if relationships between proprietary education leaders and regulators has been deliberately cultivated.

However, in spite of the complexities of introducing such an exercise in the negotiated rulemaking process, there is benefit in leaders understanding the Common Value Alignment Theory on at least two levels:

1. Utilizing ideals as opposed to technicalities as a compass when approaching complex human problems.
2. Understanding what ground must not be conceded in negotiating rule making.

The first, and most important reason from a leadership standpoint as to why an understanding of this theory is useful, is that important challenges such as college access for marginalized student groups must be solved through the employment of large ideals rather than small technicalities. For example, a conversation on limited higher education access for some of the nation's least mobile citizens is likely to elicit one type of reaction. In contrast, debating the technical requirement for an institution to generate 10 percent of its funds from non-Title IV dollars and how such a rule might impact higher education access elicits an altogether different reaction. Even though educational access is at the heart of both conversations, the latter is likely to produce a less vibrant stakeholder interest. The former is more likely to achieve rapid consensus among stakeholders opening the door for a cooperative search for solutions. In complicated conversations such as those created by the 90/10 Rule, stakeholders can quickly get mired in technicalities serving as barriers to the core issue of higher education access. This is not to say that technicalities do not have a place in the conversation, rather it is to suggest that technicalities are to be seen as one element of the bigger picture rather than mistaking them for the big picture itself. Too often complex human problems are blurred by these technicalities and are interpreted through low-resolution conversations. Having the courage and wisdom to converse without mistaking technicalities for principle increases the likelihood of high resolution conversation occurring thereby ensuring the underlying values at stake remain in focus. For this reason, keeping organizational values top of mind and measuring decisions against them will prevent leadership decisions from becoming tangled in trivial details.

Second, as detailed in chapter three, the Duncan Era has demonstrated that negotiated rulemaking requires compromise, particularly when parties are at a Common Values Impasse as illustrated in Figure 6 below. During negotiations over the Gainful Employment Rule the proprietary education sector mounted a defense steeped in the value of educational choice and produced thousands of electronically generated chain letters from students demanding educational choice. Television ads were launched with the slogan “my education, my choice!” This play on the part of sector leaders ultimately failed to resonate with rule makers and the general public (Pelesh, 1994). In contrast the Duncan administration was better organized and cited protecting vulnerable students from predatory schools as a primary value (Harkin, 2015). This approach better resonated with policy makers as well as the public at large. Consequently, Duncan garnered wide support for the policies introduced by his administration and ceded considerably less ground during negotiations than the proprietary education sector. Utilizing core values as a line in the sand that cannot be ceded serves to define the proper parameters or space that leaders can maneuver in when making difficult decisions including negotiating.

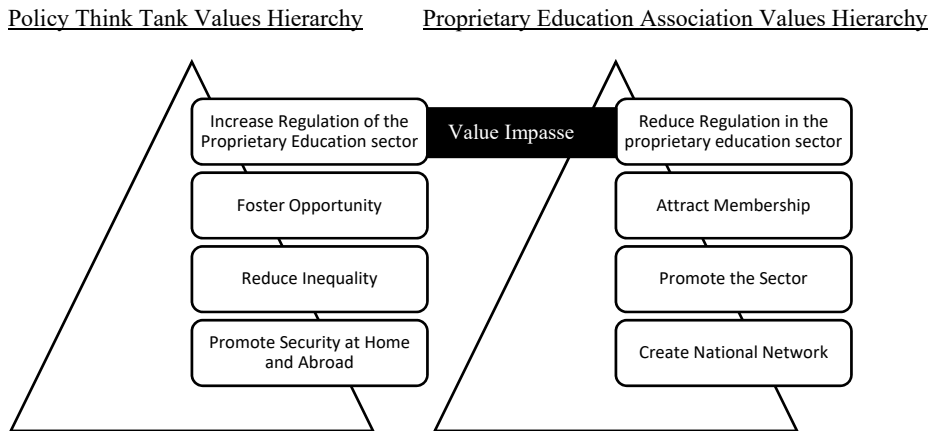
In matters of politics and public administration there will always be instances where the values of stakeholders are simply at odds and little to no opportunity exists for negotiation without compromising critical values. The Common Value Alignment theory can be further understood by diagramming a second scenario known as Common Values Impasse (Figure 8).

In this instance, the hypothetical Policy Thinktank places the regulation of the proprietary education sector in a higher position within their values hierarchy, and another stakeholder equally values de-regulation of the sector. In this instance both

parties may declare a Values Impasse recognizing that they may not have the needed common ground on which to work together. It then becomes incumbent upon each party to look elsewhere for policy allies or seek alternative avenues for solutions. While this scenario may not be ideal for either stakeholder, the disclosure of ideological values upfront, clears away ambiguity. A quick recognition of a “Values Impasse” eliminates wasted policy debate and reduces the elements of partisan frustration often experienced when regulations are introduced allowing the time and money typically spent in such scenarios to be put to use elsewhere. Figure 8 utilizes two hypothetical special interest groups to illustrate this scenario:

**Figure 8**

Common Value Impasse Diagram.



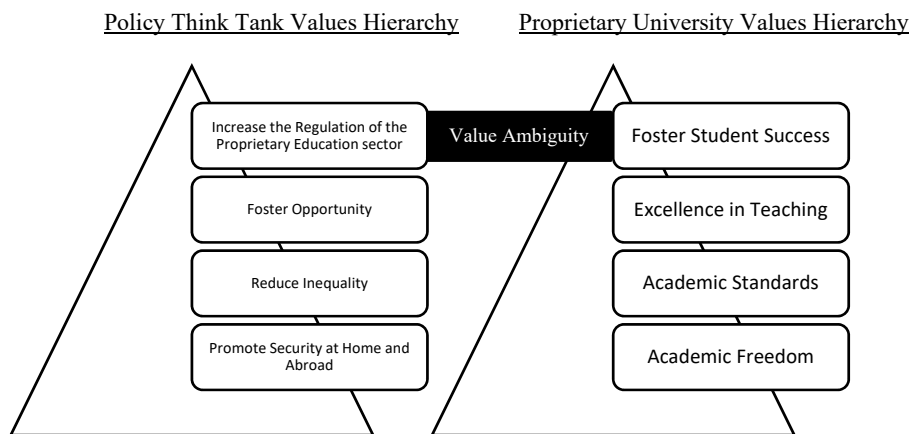
It might be argued that the policy thinktank may be operating under the assumption that increasing regulation might help foster student success, and it is reasonable to assume that in certain cases this would be correct. In these common scenarios a level of ambiguity exists and can make negotiations difficult. It might be argued that the Duncan Era was troubled by these types of technical challenges. As demonstrated in the literature review, proponents of the regulations argued that the regulations protected students while

the proprietary education sector argued that the regulations served as barriers for students. As stated throughout this recommendation this is often the result of getting bogged down in technicality and failing to operate within the realm of nuance required to tackle complex human problems. A proprietary education leader may hold the ideological position that government regulation is always problematic. A policy maker may hold the position that proprietary education is always problematic. When leaders choose to negotiate through ideology rather than an established values hierarchy, it becomes increasingly difficult to arrive at a solution that doesn't compromise key values.

When both sides make the same argument yet present incompatible solutions, the parties arrive at a Common Value Ambiguity Impasse. A Common Value Ambiguity Impasse scenario is illustrated in Figure 9 below:

**Figure 9**

Common Value Ambiguity Diagram.



In such cases there may exist what the researcher defines as “Common Value Ambiguity” which might be thought of as a common values stalemate. In this particular example, the hypothetical think tank may believe that increasing regulation might help foster student success. The hypothetical proprietary university on the other hand, may define fostering

student success with entirely different set of standards. It is therefore not perfectly clear whether a Common Values Alignment, or a Common Values Impasse has been achieved. When a value alignment is not clear, as in the case of Common Value Ambiguity, it is incumbent upon the stakeholders to determine if a values impasse exists. If it is not clear and under such circumstances, there remains a level of disagreement, even if one side or the other demonstrates evidence in support of their claim, a state of Common Value Ambiguity must then be declared, allowing each respective party the opportunity to seek allies elsewhere or work to find alternative avenues to an acceptable solution. A Common Value Ambiguity is likely to occur under four scenarios:

- A failure to understand the available data on the part of one stakeholder or another.
- Empirical data is not available or unclear allowing stakeholders to interpret the data through an ideological or partisan lens.
- One or more party is deliberately or unknowingly misleading in their assertions.
- One or more party is mired in technicality as opposed to dealing in values.

Among the challenges when presenting data to support one's ideological values position is that definitions of evidence for policymakers do not always match academic definitions of evidence (Oliver et al., 2014). A body of literature exists, outside the scope of this study, that explores the value of evidence-based research which ultimately points to the lack of any standard for research or evidence when supporting public policy. In the absence of such standards, policy advocates are subject to a range of folly with misreading to misleading serving as bookends of the spectrum. Within this spectrum also exists fallacious approaches by policy makers such as establishing research parameters

that beg the question, or in other words studies commissioned and designed to help with agenda setting or provide an advantage in debate or refuting opposing arguments as opposed to a more object standard (Oliver et al., 2014).

To help control for values ambiguity, Witesman and Walters (2015) suggest public administrators codify definitions of each values term. For example, if protection of minorities is to be placed as a value in the hierarchy, a clear definition of what this term means must be provided. In this case the definition reads “she believes that government should consider and protect the rights of those who do not have the greatest voice in society” (Witesman & Walters, 2015, p. 92). Likewise, if altruism is to be placed as a value in the hierarchy the definition would read “she is personally committed to serving others and putting the needs of others before her own needs” (p. 92). The inclusion of definitions is among the ways to control for ambiguity among individuals and thereby draw closer to something representing a collective values hierarchy.

Misunderstanding data, particularly in complex policy issues is understandable, particularly in the light of ideological or partisan misdirection. However, when policy makers or proprietary education leaders willingly force a Common Values Ambiguity through fallacious reasoning or on a more serious note, deliberately misleading, they violate the previously established principle of taking “up the immense cause of the Other” and learning “to lay down the smallness of ourselves” (Lipman-Blumen, 2006, p. 254). Under these circumstances trust also becomes elusive (Mayer et al., 2015). Covey (2011) summarizes servant leadership in part as the act of principled exercise of natural authority or one’s conscious ability to choose. As one exercises their natural authority in a principled way, particularly in a manner that empowers the follower, one builds up a

storehouse of moral authority which is the legitimate trust and respect of others (Covey, 2011). As the storehouse of moral authority begins to fill up, the principled leader begins to attract principled followers (2011). Inversely as policy makers or proprietary education leaders use their natural authority in unprincipled ways, including forcing common values ambiguity through fallacy or deception, they inversely build up a storehouse of amoral authority and attract unprincipled followers. While such maneuvers may result in short term gain, particularly in partisan policy challenges, Greenleaf (1977) would argue that these results will not be sustainable over time.

In most cases, hierarchies will not perfectly define all contexts, however they can provide an ideological framework in which to measure the value priorities of various stakeholders (Whitesman & Walters, 2015). They may also be useful to stakeholders as they seek to achieve stated goals (Haynes & Hickel, 2016), particularly in negotiated rulemaking. In this case, hierarchies are useful in applying Common Value Alignment Theory and its components which can be summarized as:

- Common Value Alignment, where stakeholders align in one or more hierarchical value position allowing for the subordination of ideological values lower on the hierarchy. Once identified, stakeholders can unite on common ground to advance policy supporting common values relative to their hierarchical position.
- Common Value Impasse, where stakeholders clearly place one or more values at different positions relative to the values hierarchy. If one or more values relevant to a given policy are held to be of more worth in hierarchical terms than another, it is likely that the stakeholders will not align. An early

acknowledgement of a Values Impasse eliminates wasted policy debate and reduces elements of partisan frustration often experienced when regulations are introduced allowing the time and money typically spent in such scenarios to be put to use elsewhere.

- Common Values Ambiguity, where it is not clear if one or more values placed relative to one another on a values hierarchy are equivalent. “Providing for the general welfare” a clause in the United States Constitution, has historically served as an example of a values impasse, as partisans have disagreed on how best to accomplish this task. Likewise, the term Gainful Employment found in the U.S. Higher Education Act, has served as an example of Common Values Ambiguity, as stakeholders have worked to define and apply this term to American Higher Education. In such instances, stakeholders must communicate their positions to quickly determine if a Values Alignment or Impasse exists. If an alignment or impasse is not clear, a Values Ambiguity should be acted upon similarly to a Values Impasse.

#### **Recommendation Number Four: Continuing a Culture of Compliance**

Each of the leader participants agreed that regulatory accountability is an important component of higher education and have implemented various programs to ensure strict regulatory compliance at their institutions. None of the leaders argued for zero regulatory controls and several of the participants argued that students need some level of protection given the high stakes nature of their academic undertakings. Higher education is for many students a costly investment and students enroll in colleges and universities with an expectation that they will, on some level or another, obtain a return on their investment.

In the proprietary education sector, the expectation is often the obtainment of employment upon graduation. Furthermore, because proprietary institutions service higher percentages of vulnerable student populations such as adult learners, low-income, and first-generation minority students, failure in higher education may pose greater risk to students served by the sector.

### *Support for the Solution*

As stated in Chapter Four, the term “culture of compliance” was used by eight of the twelve participants. Second only to the theme of regulatory equity, a culture of compliance was the densest theme in the study. In discussing the regulatory role of institutional leaders, Participant Twelve shared his opinion of what is important for leadership in a heightened regulatory climate:

A leader really has to make decisions based on what is best for the student.

Leaders in Higher Ed will always say that, but the fact of the matter is, so many are steeped in archaic policies and procedures that it's really an imperious relationship between the institution and their students. You see it every day. One size doesn't fit all any longer.

Participant Eight spoke of his current institution boasting, “We provide more student support and more student services and focus on a greater commitment to Student Success than any University I've ever been with previously and we would do that regardless of federal regulations.” In the opinion of the researcher, it is precisely the attitude expressed by Participant Eight that must be adopted; namely, a sharp focus on student success, even in the absence of regulatory requirements. Participant Six argued that, “All institutions talk about student centricity. But when you start peeling the onion you get the difference

loud and clear between those who live it and those who talk about it.” The Participant Leaders nearly universally agreed that when high levels of student service are inherent in an institution’s operational model, their likelihood of surviving heightened regulatory scrutiny improves. Furthermore, recognizing that “one size doesn’t fit all any more” as Participant Twelve stated, is critical as the academic landscape is being dramatically changed through technology ranging from online education to artificial intelligence playing an ever-expanding role in academia. Participant Three, perhaps said it best by stating “if you don't deeply care about every single student who attends your institution, you're in the wrong place.”

As Greenleaf (1977) emphasized, all stakeholders must place emphasis on the development of individual human beings and by extension the broader community to which they belong. As student needs are placed in front of profits and faculty and administrative convenience, the institution is in a better position to develop and foster the growth and development of its students. Those proprietary institutions working with large numbers of minority and low-income students are in a unique position to provide a service to the individual student and the community to which they belong; and if done correctly, should attract admiration rather than ire.

### ***Potential Barriers and Obstacles***

Greenleaf (1977) expressed specific concern for the use of coercive power as a means for the institution “to compel or covertly manipulate” students (Greenleaf, 1977, p. 180). This phenomenon can take place at multiple levels within an institution of higher education, including the abuse of superior subordinate relationships between faculty and students or the compulsion of administrators to prioritize the interests of the institution

and its leaders over fundamental student support services (Greenleaf, 1977). Greenleaf's concern strikes at the heart of the argument made by proponents of higher regulatory scrutiny of proprietary institutions. Harkin and Field (2011) have for example argued that stronger regulatory measures will curb abuse, including predatory behavior such as coercing students to borrow large sums of federal dollars to pay for their education (United States Senate, 2009). High tuition costs leading to higher student debt levels is a challenge across all higher education sectors and not unique to the proprietary sector and regulators would do well to acknowledge this. However, a sound solution does require administrators to strike a delicate balance between encouraging students to persist in their education while also avoiding excessive borrowing. While the Department of Education requires each borrower to complete entrance counseling, responsible leadership in higher education would require administrators to supplement this information and work closely with students throughout their academic experience to help them understand the implications of future loan debt.

### ***Implementation of the Proposed Solution***

Greenleaf predicted that the “people who have the power to turn the money on or off” would in time be less apt to support institutions who exist strictly for the sake of scholarship (Greenleaf 1977, p. 202). The investments made by the private sector in proprietary institutions may serve as evidence for the accuracy of Greenleaf's prediction. Greenleaf (1977) suggested that sound leadership in higher education institutions, regardless of designated sector, also involves preparing “students to serve and be served by the present society” (p. 203). Graduating with less debt will assist students in achieving self-reliance and place them in a more favorable position to be active servants

in their communities. Furthermore, as students transition into the workforce, they become bearers of responsibility and in time evolve into leaders. Greenleaf (1977) therefore argues that the classroom should be viewed as more than an environment where superiors and subordinates transact in knowledge, but should also serve as a “laboratory for learning to bear responsibility well” (p. 211).

The study participants shared a number of procedures they follow to maintain compliance. The general spectrum included accountability through performance reviews, internal as well as third party audits, employee training, sound lines of communication with accreditors, regulatory consultants, and strict policy enforcement. However, there does not exist uniform approaches to maintaining a culture of compliance among these institutions. It is not evident that this is necessary, however given that the regulations are uniform, one might ask if adopting a more uniform standard of training would prove beneficial. Furthermore, it may prove valuable if institutions were to partner with accreditors and other regulatory overseers to develop at the very least a set of agreed upon components that would serve as adequate training and at most a universal curriculum that can be uniformly administered across institutions. Cultivating relationships with regulators may open up such possibilities.

If developing a universal standard for training or a uniform curriculum to instill a culture of compliance is deemed unworkable, it is recommended to codify the steps institutions are taking to maintain their respective cultures of compliance. While the participant leaders were able to describe verbally the steps they take in order to ensure compliant behaviors and outcomes, none referenced a written strategic plan codifying these procedures. A clear roadmap of exactly what training will take place and at what

intervals, demonstrable examples of precisely how personnel are held accountable, and the cycle of audits should be prioritized. Not only will this ensure that adequate activities designed to instill compliant habits are occurring, it will also serve as documentation that can be proactively discussed with accreditors and regulators as a means to build trust. It may also come in handy as documentation in a reactionary scenario where a violation of a regulatory standard has occurred. When compliance is routine and deep within the fabric of the institution, it is much easier to demonstrate that violations of standards are an anomaly and not a symptom of a challenged compliance culture. It also demonstrates the characteristics of ability, benevolence, and integrity that are fundamental to building relationships of trust with regulators (Mayer et al. (2015).

In addition to codified and uniform compliance procedures, using these touchpoints with faculty, staff, and administration to instill organizational values, including Greenleaf's (1977) admonition to prepare students for the rigors of the job market. The compliance roadmap should also include ways to socialize, articulate, and evidence the outcomes and achievements of the institution to key publics. As argued in Recommendation One, it is not enough to remain silently compliant and simply wait for accreditation site visits or other regulatory cycles to demonstrate adherence to regulatory standards. Proprietary education leaders must be vigilant in not only maintaining cultures of compliance but also in adequately communicating these achievements to critical stakeholders particularly regulators and public officials.

#### **Recommendation Number Five: Establish A Standard of Regulatory Equity**

The most difficult recommendation, in terms of implementation, is that of establishing a template for regulatory equity. Based on the responses, it appears that the

participants universally believe that if the regulations do not prove tenable across all sectors, or at least across all sectors with similar programmatic offerings, then they should be modified, replaced, or abolished. None of the participants suggested that the federal government not regulate the sector, and a majority agreed that the basic ideas behind the Duncan Era regulations were sound (none, in contrast, expressed any positive or beneficial aspects of the pre-Duncan Era 90/10 Rule).

While the researcher agrees that opportunity for equitable regulation exists, this particular recommendation comes with some hesitation and the request for stakeholders to pause and examine the regulatory landscape of all sectors. Rather than aiming to apply regulations like the 90/10 Rule or Gainful Employment to all educational sectors, the researcher recommends the elimination of such regulations. Finally, the researcher recommends that the Department of Education relegate components of their present regulatory oversight back to institutional and programmatic accreditors who are in better positions to evaluate institutional and programmatic effectiveness.

This section will provide support for this solution by utilizing data produced by the qualitative phenomenological research outlined in this study. Relevant literature will also be utilized to support the recommendation. Potential barriers and obstacles including the partisan and ideological positions of those wishing to regulate the sector have been given considerable treatment in this study and will not be replicated here. However, it is the researcher's opinion that the primary obstacle to this solution is the political and ideological divide surrounding proprietary education. As will be discussed the researcher believes there is a narrow intersection where stakeholders may be able to solve for the current regulatory problems.

*Support for the Solution*

As previously stated, the theme of regulatory equity was universal among the leader participants. Participant Four stated, “What we advocate for is equity in regulation across all sectors of higher education. We will compare ourselves to [any higher education institution], as long as it's done fairly, and the rules apply to everybody equally, and so we're promoting any policy, or any processes, or anything that helps higher education to improve.” Participant Four also argued:

But be fair, it's not just one sector that needs to be looked at. It's everybody! That's why I think that title IX is doing a better job than the Duncan Regs, because they are looking at everybody, not just one sector. It's a little bit more equitable! I'm not saying everybody should be punished. I'm just saying everybody should be looked at using the same pair of scales instead of targeting one sector.

These comments are representative of the other participant's expressions on the subject.

Participant Six stated that regulators of the proprietary education sector have “painted with a brush that was so broad that it didn't discriminate against those who are actually compliant and operating with the best of intentions and outcomes versus those who deserved to have some sort of intervention.” As discussed in Chapter Four, several of the participants believe that as a problem arises, regulations are put in place which amplify the problem, which in turn leads to more regulation, thereby leading to a cycle that results in closure rather than continuous improvement.

As stated elsewhere in this study, painting the motives of an entire sector with one broad brush stroke in the way that many of the federal regulations of the sector do, is

likely to simplify a phenomenon and fall short of any meaningful or comprehensive understanding useful in solving for challenges in higher education. Participant Six argued, “I think sometimes the regulations that are imposed upon a particular sector assume a one-size-fits-all.” He further stated, “I think it's unfortunate when you have imposed a set of regulations on all institutions within a particular industry without any concern about whether there is a need for that to occur or not.” In these types of scenarios, the abuses of the few often burden the compliant many (Miller, 2005). Broad and overly simplistic approaches however are useful in the imposition or implementation of agendas. Given the necessary intersection between regulatory and political universes, it is understandable why so much of the literature is simplistic in its argumentative nature. Complex regulatory issues often require a simple or one-sided presentation in order to achieve traction in a political environment or to gain public support.

Due to the complexity of many of the regulations that have been levied on the proprietary education sector including the 90/10 and Gainful Employment Rules, it may not be sensible to attempt to apply them across all sectors. Robert Shireman (2019) noted “the very definitions of each sector are about their accountability, the way that each is regulated. Public and nonprofit entities must comply with an array of laws meant to protect the public interest. No such restrictions apply to for-profit entities” (p. 1).

The following table was laid out by Shireman (2019) providing a high-level overview of the differences in regulatory oversight between higher education sectors:

**Table 4**

Regulatory Differences by Higher Educational Sector.

<b>Regulatory Differences Define Whether an Entity Is Public, Nonprofit, or For-Profit</b>			
	<i>Public</i>	<i>Nonprofit</i>	<i>For-Profit</i>
<b>Who is responsible for governing the institutions, including setting tuition rates and budgets?</b>	Elected and appointed state officials	Trustees	Owners
<b>What are they allowed to spend money on?</b>	Education or another public purpose	Education or a charitable purpose	Anything, including distributions of profit for owners
<b>Can top-level decision-makers personally profit from the operations of the institution?</b>	Generally no	Genrally [sic] no	Yes
<b>Do colleges have access to equity markets to invest and expand?</b>	No	No	Yes
<b>Is there a financial backstop if something goes wrong and the college is bankrupt?</b>	Taxpayers	No	No

Shireman (2019), Restoring Congressional Oversight of For-Profit Colleges

Before addressing why this table has been included, there are a few items worth noting. First of all, it is concerning to the researcher that more care was not given to the structure of this table. Most notably, it insinuates, or at the very least may be interpreted by an unknowing reader, that proprietary institutions do not have regulatory financial

oversight. A distinction should have been made between proprietary institutions that are accredited and Title IV eligible and those that are strictly business to consumer institutions. The regulations that Shireman (2019) is advocating for only apply to the former. While non-accredited colleges may do with their profits whatever they wish, accredited Title IV institutions have strict financial accountabilities including maintaining an adequate federal composite score.

Presidents and executive leaders across all sectors of higher education are generally bonused based on budgetary performance and as the Leader Participants discussed in Chapter Four, there are examples of abuses when student funds are diverted to other public purposes. Participant one for example noted:

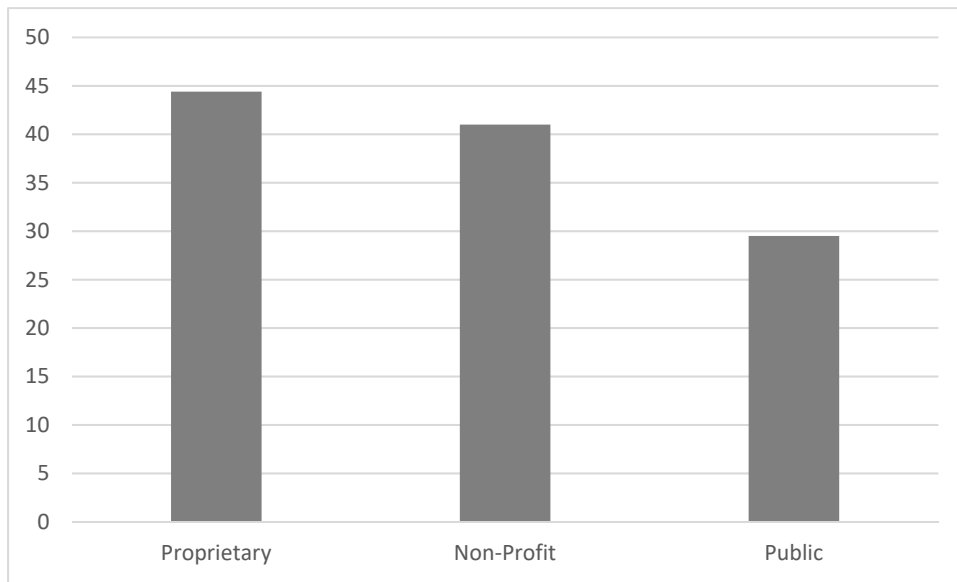
Louisville interstate wire fraud. You look at Baylor University vicious Title IX failures in rape cover-ups. You look at North Carolina, they created an entire department. It was fraudulent. Those kinds of things should be death sentences. None of those institutions have had any accountability of any kind.

While the table was designed to be a persuasive illustration in support of Shireman's (2019) desire to see the regulations he designed and personally implemented reinstated, and contains some inaccuracies, it is illustrative of a larger point. It is the opinion of the researcher that it may not be sensible to broadly apply regulations like the 90/10 Rule or Gainful Employment Rule to all sectors given the key differences in governance and accountabilities. Yet the literature that illustrates what might happen if such regulations were to be applied across all sectors is worth briefly noting here. For example, if the Gainful Employment Rule were to be applied to the Private Non-Profit sector 41 percent of programs currently offered would not meet the standard and either

fail or be placed in probationary status (Murkami, 2020). This is not far from the projections of the Proprietary Education Sector who would have 44.4 percent of programs fail or be placed on probation (2020). Likewise, 29.5 percent of programs in the Public sector would fail or be placed on probation (2020).

**Figure 10**

Programs Not Meeting Gainful Employment Standards.



Murkami (2020).

According to this data,

The people asserting that for-profits are uniquely bad actors are wrong -- as a group, their performance is quite similar to that of nonprofits. Publics do noticeably better than either nonprofit private or for-profit colleges, no doubt because they generally cost less to attend and therefore their graduates have less debt” (Murkami, 2020, p. 1).

Shireman (2019) stated “Think of the GE rule as a ban on the government paying for unsafe or worthless products” (Shireman, 2019, p.1). However, if applied across all

sectors, among the 40,000 programs impacted would be the Harvard School of Dental Medicine and nearly 70 percent of the nation's law schools.

This data demonstrates the fallibility of the Gainful Employment Rule. Lynn Pasquerella, president of the Association of American Colleges and Universities, argued that placing rules on public institutions “would further exacerbate the false narrative that the value of college relates only to employment” (Murkami, 2020, p. 1). While generally beneficial to one's employment status, a college education, regardless of the sector, brings additional value. Rather than apply harmful regulations to all sectors, policies that would eliminate tens of thousands of programs, such rules should simply be eliminated and expressly avoided in future policy endeavors.

In the spirit of what the data suggests, the leader participants were arguing there are beneficial regulations that should indeed be applied to all sectors. For example, program disclosures have the potential to inform enrollment decisions for prospective students. Participant Two expressed concern that only proprietary programs are required to provide program disclosures. He stated:

If you're having to disclose things that not everybody with same program is required to disclose then how is it helping the students to choose? You know, the idea is we want to give them information to help them choose between programs, to choose between schools. But in your Market, if you are the only one disclosing, and the three other public or non-profit schools in your market are not, then you have a problem.

Having served as a commissioner for a regional accrediting body, it was the feeling of Participant Six that the Department of Education, through enactment of the

Duncan Era regulations, has overstepped the authority of the accrediting bodies in a way that is not helpful to students. He argued, “the regulators are not as sophisticated about management of Institutions as accreditors.” For Participant Six, the bottom line was:

Are the students being served? Are they getting a good education? Do the outcomes demonstrate that? And are the resources available to the student to provide the support necessary for them to persist, to graduate, and to fulfill the purpose for why they came to the institution in the first place? I’m not sure we care that much what happens thereafter.

He pointed out that the public and private non-profit sectors primarily answer to their accreditors, who in his opinion better understand the inner-workings of higher education (in large part due to administrators serving as commissioners and site visitors) and that no extra federal regulatory oversight is required for their operations. Citing the benefit of oversight by regional accreditors, he argued:

You should have each school be evaluated on their own merit. This is how the regional accreditors do it. They don't compare us to Columbia, which is in the same region, or Princeton. They evaluate us based on our own mission. You can't standardize a college education because it's so different in each institution. It's different if you're a faith-based institution. They have completely different missions. Are you going to evaluate them the same way you evaluate us? No! And the regional accreditors recognize this. And that's my issue with federal regulators. You can't have standardized regulations! Everybody should get individualized supervision!

Perhaps it is at this precise juncture where the line should be drawn. In other words, there are regulations that easily and universally apply to all sectors without the need for calibration. *These, and only these*, types of regulations should be employed by federal policy makers. Title IX is an example used frequently by the Leader Participants that is in effect today that would fit into this category. Program Disclosure is another used by the participants that would qualify under the researcher's recommended standard to be applied in the future. Inversely, Gainful Employment and the 90/10 Rules are examples of regulations that should, under no circumstances, be entertained by federal policy makers. They do not meet the standard because they are not easily replicable across all higher education sectors, they introduce barriers to students, and they rest on what the researcher believes to be flawed assumptions such as their ability to reduce default rates and "the false narrative that the value of college relates only to employment" (Murkami, 2020, p. 1).

### ***Implementation of the Proposed Solution***

The difficulty of calling for a complete paradigm shift amidst a deep partisan divide is not lost on the researcher. Yet, in order to create a climate of sustainable regulatory equity, drawing on the central call to action of this chapter; namely, uniting in support of low-income and minority student access to higher education, might serve as a Common Values Alignment benefiting all stakeholders. Of course, this must begin with proprietary education leadership. As stated earlier in this chapter, the researcher is working under the assumption that this goal would reside higher in the values hierarchies of all stakeholders than regulating the proprietary education sector. It is the opinion of the

researcher that this intersection is least likely to result in Common Values Impasses and therefore the only conceivable path forward.

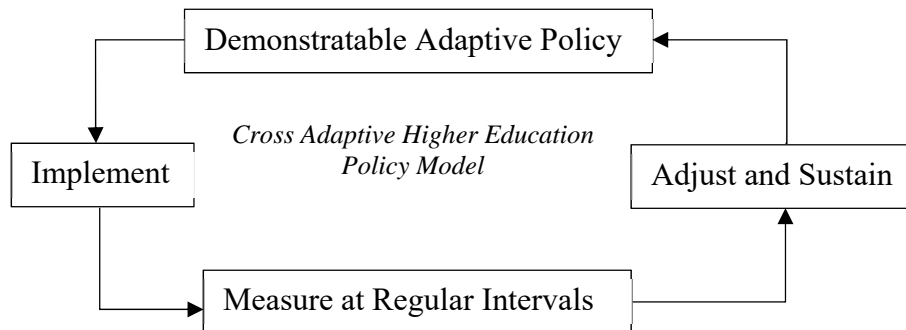
As stated earlier, it is recommended that two categories for federal higher education regulation be created. The first is titled by the researcher as “Adaptive Higher Education Policies” (Figure 10). In order to qualify in this category a regulation must:

- Be easily adaptable across all education sectors;
- Demonstrate that implementation does not impede student access to higher education or create obstacles in student progress toward graduation;
- Empirically demonstrate correlation to its stated goal.

Title IX or universal programmatic disclosure are examples of regulations that fall under what the researcher describes as the “Cross Adaptive Higher Education Policy” umbrella. Any policy in this category such as Title IX need not be perfectly crafted at launch. They are likely to be debated and modified as new data informs regulators of a given policy’s effectiveness. The following diagram serves to illustrate the model:

**Figure 11**

Adaptive Higher Education Policy Model.



The second category is “Non-Cross Adaptive Higher Education Policies” (Figure 11). To qualify for this second category a regulation must:

- Not be easily adaptable across all education sectors;

And to determine if a Non-Cross Adaptive Higher Education Policy is beneficial it must not violate one or more of the following:

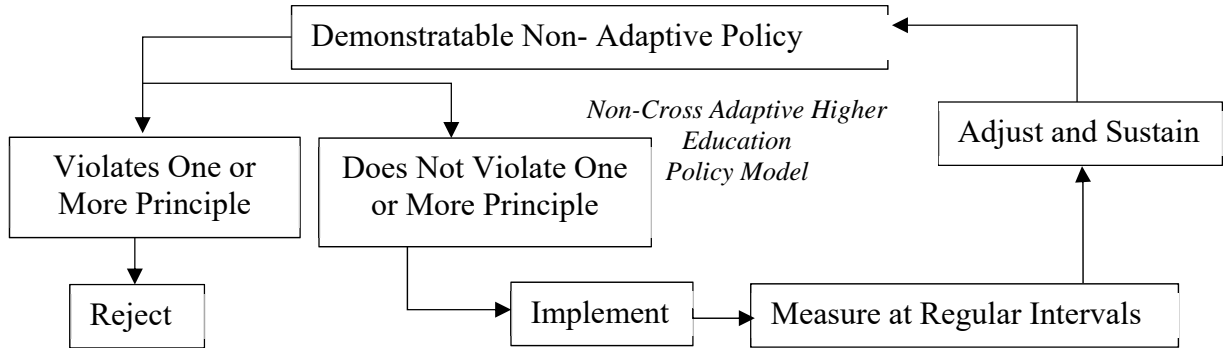
- Hold the potential to impeded student access to higher education or create obstacles in student progress toward graduation;
- Ability to achieve its stated goal can only be demonstrated through rational argument verses an empirical demonstration.

The 90/10 Rule is an example of a regulation that would be described as Non-Cross Adaptive Higher Education Policy that is not viable. It is not a regulation that can be easily applied to all sectors, as demonstrated throughout this study it provides barriers for low-income and military students, and its stated goals of curbing student loan default and reducing abuses cannot be empirically demonstrated, despite being in effect for nearly three decades. Rather the arguments put forward are purely constructions of reason such as Letteny’s (2004) curbing of abuses that are never identified or described.

As Shireman (2019) argued, there are some good Non-Cross Adaptive Higher Education Policies currently in place. He stated, “the very definitions of each sector are about their accountability, the way that each is regulated. Public and nonprofit entities must comply with an array of laws meant to protect the public interest” (p.1). These Non-Cross Adaptive polices are considered sustainable because they do not introduce obstacles for students and they can be demonstrated to meet their core purposes.

**Figure 12**

Non-Cross Adaptive Higher Education Policy Model.



Under the Cross Adaptive Higher Education Policy model, adaptive policies should be considered acceptable and any non-adaptive policies that either introduce barriers to students or cannot be shown to achieve their stated goals are considered institutionally burdensome and should be outright rejected and dissolved.

Notable weaknesses in this model include the spectrum of what one might consider as an obstacle to educational access. For example, it is often argued that in the wake of a proprietary institutional closure, students should simply pick up the pieces and attend a community college. Despite the literature demonstrating that this rarely happens, the need for political talking points may potentially overshadow empirical research. However, as stakeholders utilize tools such as the Cross Adaptive Higher Education Policy model as a method to quickly differentiate the impact of regulation, it is the researcher's belief that ideological drives on all sides of the debate will be mitigated. While it may be naïve to assume that such a feat is possible, an equitable standard of some type should at least be extended. If policy makers fail to live up to acceptable standards, then the electorate public will at least have something to measure the performance of these public officials against. For example, it might be argued that the

United States Government has not historically lived up to the ideals of the Declaration of Independence or the U.S. Constitution at times. Nonetheless, it is arguably better to have the standard in place, even if difficult to adhere to, than to have nothing at all. In the case of the Cross Adaptive Higher Education policy model, the researcher doubts that policy makers will necessarily adhere to such a standard. However, it is arguably better to have a standard in place.

It is theorized that if put to the test, many Non-Cross Adaptive policies would prove to be failures. Just as the 90/10 and Gainful Employment rules have been demonstrated by the literature to violate the principles of the Non-Cross Adaptive Higher Education policy model, many of the policies being proposed by the Century Foundation and other activist groups will also prove to be failures. For this reason, federal regulators should severely limit policy approaches that qualify as Non-Cross Adaptive, and defer to institutional and programmatic accreditors to be the primary arbiters of proprietary education oversight in such instances.

As with the previous solutions, proprietary education leaders must play an active role in implementing such a process. Van Cise (1966), writing many decades ago for Harvard Business Review addressed a number of challenges relevant to this study, most notably the challenge of government regulation given the general lack of industry expertise and that of industry self-regulation given the potential for conflict of interest (1966). With these challenges in mind, Van Cise (1966) provided three alternatives, each of which have worked for other industries and have relevance in the contemporary challenges associates with regulating the proprietary education sector. Adapted for the purposes of this study, these alternatives are:

1. Proprietary education leaders highlight their role in educating low-income and minority students in order to propose and persuade Congress to adopt a special statute (this might include the Cross Adaptive Higher Education Policy Model) to ensure continued access for these students. Van Cise (1966) argued that such measures are the safest route for industry.
2. Proprietary education leaders propose tailor-made guides and rules enforced by the FTC that will protect the interest of their students. Van Cise (1966) argues that while less durable than alternative number one, it may prove to be an easier pathway.
3. The proprietary education sector as a whole agree to a set of self-regulatory standards and consult with the Department of Justice or FTC in order to obtain a formal opinion on the legality of such standards. While this option does not provide the level of immunity afforded by alternatives one or two, it does involve governmental review and cooperation from officials (Van Cise, 1966).

It is at these intersections where sector leaders, particularly state and federal associations can do a better job of pooling their resources and engage in the dialectic process with public officials. As argued elsewhere in the study, most of these organizations have served to play defense once new regulations emerge. To truly ensure the future of the sector and by extension access to higher education for a segment of vulnerable student populations, an offensive push for cooperation with public officials may be necessary. In fact, an argument might be made that the reprieve provided by the Devos administration has been a missed opportunity for sector leaders in this regard.

One notable weakness addressed by Van Cise (1966) in taking such approaches is that it diminishes the free market element which has been central to proprietary education, allowing the sector to be nimble and innovative in meeting industry needs (Bennett et al, 2010). Van Cise (1966) argues however that Congress exists to protect more than simple economic competition and that leaders of industry should respect that the tenants of civil society extend beyond the commercial. Van Cise (1966) argued “If some slight softening of competition through self-regulation by industry is the price which we must pay to provide ethical protection to the defrauded consumer and the defenseless competitor, let us pay it” (p. 6). This attitude is in line with the study participants who universally agreed that students must have some protections by way of regulatory control and that a strict free-market approach to education has the potential to invite abuses. Furthermore, with the direct line of accountability established by the FDLP and the heavy reliance by the proprietary education sector on Title IV funds, an argument can be made that the sector does not fit the model of pure free market competition to begin with. So long as federal funds remain the lion share of sector revenue, tight regulatory controls will remain in place (Lawson, 2013). Sector leaders therefore have the choice to wait and hope that future regulatory landscapes will be less severe than the Duncan Era, or they can actively work to implement the types of common-sense controls that the research participants openly called for. In the words of Van Cise (1966), “it seems far better for industry to attempt to meet the objectives of Congress through cooperating with the government, under the flexible terms” particularly those jointly enacted by the sector and policy makers, “than to be forced by new precise, procrustean regulations” (p. 6).

### **Implications**

Based on the study outcomes and existing literature, mis-steps have occurred both by regulators and proprietary education leaders alike. Therefore, the delicacy of any regulatory undertaking of the proprietary education sector must be appreciated by both regulators and operators. If the past serves as insight into the future, the risk to students is great if any party loses sight of this fact during future regulatory negotiations. The primary implication therefore is that proprietary education leaders and policy makers must seek to cooperate in developing regulations that provide the needed protection from practices deemed by regulators as predatory while also not prohibiting access for low-income students. This chapter has provided a handful of recommendations for how proprietary education leaders might lead this process.

Seeking the recommended level of cooperation outlined in this chapter does not come without its challenges. This study for example has demonstrated that the Duncan Era policies as well as other federal regulation is perceived by leaders in proprietary education as ideological, politically driven, budgetarily prohibitive, and ultimately harmful to students, particularly low-income and first-generation minority students. Regulators and policy makers must take into consideration at least some of these perceptions. Trying to argue them away, as policy makers and advocacy groups have historically attempted to do, may be disingenuous and disrespectful of the phenomenological experiences of those burdened with regulatory adherence as well as the empirical evidence outlined in existing literature. Attempts to broadly assert an inaccurate or incomplete narrative into public dialogue, while heretofore successful in damaging the reputation of proprietary institutions, is at the end of the day, ignorant at

best, and deceitful at worst. Sector leaders have been shown to feel that the needs of low-income and minority students can no longer be deceptively swept under the rug or hidden by what has been perceived as verbal smoke and mirrors employed by critics of the sector.

Furthermore, despite the call for a shared leadership burden, the study suggests that the initial leadership push to improve this dynamic falls at the feet of proprietary education leaders. The federal government, including the United States Department of Education, has historically been volatile and prone to ideological swings during administration changes, whereas the aim of proprietary education remains steady. Strategies for serving students may change based on trends in technology and academic delivery, but the aim of successfully operating a proprietary institution remains constant. It is within this consistency that proprietary education leaders may find opportunity to mitigate future regulatory damage to their mission.

In addition, it is critical to the sector's future sustainability, that abuses previously committed by sector leadership remain a part of history and are never replicated. Those wishing to own or lead proprietary institutions must give pause, and after a deep gut check, commit to principles that place student success ahead of personal or institutional gain. Simply put, equitable regulations should exist. Policies that truly protect the interest of the public and students are reasonable (Van Cise, 1966). Policies that ideologically serve to weaken proprietary education or advance one politically, despite the damage done to low-income and minority students as well as those who labor to serve them are reprehensible. An appropriate regulatory environment therefore should be one in which proprietary institutions and their students are free from burdensome restrictions and are

primarily accountable to institutional and programmatic accreditors. However, given the potential for damage to vulnerable students, when leaders knowingly violate just regulatory principles, particularly for personal gain, the regulations must be structured such that the proverbial hammer comes down on the offenders with brute force. Yet to arrive at this level of policy cooperation, proprietary education leaders must seek to partner with regulators and policy makers rather than react to them.

### **Practical Implications**

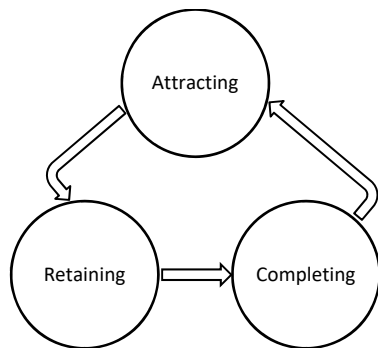
The literature and phenomenological qualitative data generated from the study suggest to the researcher that among the practical implications for proprietary education leaders are knowing the intersection on which to engage regulators and policy makers. For decades proprietary education leaders have engaged in areas that are not aligned to the hierarchical value positions of policy makers or critics of the sector. Cries for school choice, regulatory equity, and government overreach, might be valid and resonate with those in the sector, but they have proven to be subordinate to the hierarchical value positions held by opponents. Consequently, the majority of the debate has resulted in Common Values Impasses or Common Value Ambiguities. In other words, the debate has ended in partisan stalemate with both sides waiting in the dugout for their political party to once again take the field. Meanwhile, educational access for low-income and minority students remains a persistent concern.

Taking note of the past, it may serve proprietary education leaders to take note of two primary implications. The first is to avoid shying away from the sector's role in educating non-traditional student populations. Leaders must acknowledge this important role, own it, and approach policy makers with the intent to continue this legacy.

The second implication is that in policy negotiation sector leaders are not always in alignment. This may be in part due to the fact that the operations of proprietary institutions, much like any other institution of higher learning differ in scope and complication. Given that many of these institutions contain programs in fields such as medicine or biochemical engineering, the technology demands and programmatic accreditation requirements create difficulties for operators. However, if any proprietary institution were to break down the basic operational components it would come down to three or four primary functions. These are “attracting,” “retaining,” and “completing” students, and in the case of some institutions “placing” students would serve as a fourth category given that certain accrediting bodies require specific placement ratios as a condition for continued operation. Given that placement is not a regulatory requirement of all proprietary institutions, and is subject to institutional accreditation type, it will not be touched upon here. Figure 13 below illustrates this concept.

**Figure 13**

Proprietary Education Primary Functions Model.



In simplest terms this model encompasses all revenue needs, compliance issues, and most importantly, student outcomes in that all institutional activities and outcomes are appendages to, or a result of, at least one of these primary functions. At first glance, an education leader may scoff and insist that “delivering an education” is the primary

function of an institution of higher learning. While, from a certain point of view, this may be correct, the Primary Functions Model would suggest however, that education is the vehicle or the means by which institutions attract, retain, and complete students.

Additionally, it might be argued that these basic functions apply to all institutions of higher education regardless of sector. This may be true; however, some institutions may consider research, ratings, fundraising, or other components that generally lie outside the scope of most proprietary institutions to be fundamental. Without suggesting that this model exclusively applies to proprietary institutions, this phase of the recommendation will leave out public or non-profit institutions for simplicity sake.

Several of the study participants stated that one of the most rewarding aspects of involvement in higher education is the benefit of experiencing firsthand the positive impact their educational offerings have on students and graduates. Assisting in a student's personal transformation and achievement often lead one to make statements similar to Participant Six who stated:

I love to see students who, perhaps are coming from a perspective where they wouldn't have opportunities in life were it not for education. And when they were given those opportunities, actually flourished. And to me that is perhaps one of the most exciting things that I could witness and be participating in. Is to watch students who make that journey.

In speaking of higher education leaders, Participant Six also stated, "if their true passion is about students and helping them, it's almost hard not to be successful." While these and similar statements are common among higher education leaders, it must be recognized that they are made possible through institutional adherence to the Primary

Functions Model. In other words, a student becomes successful as a result of that particular student:

- Inquiring about the institution, engaging with the admissions function, and enrolling in the institution (Attracting).
- Receiving a quality education and making a meaningful connection to the staff, faculty, and students (Retaining).
- Achieving the Satisfactory Academic Progress necessary for graduation (Completing).

An oft repeated phrase by the study participants is, “If you put the student first, the rest of the business will fall into place.” This statement and its infinite variations are generally accepted by those who work in education. However, such statements are seldom accompanied by an interpretation or metric in which to measure if students are being put first. After completing the literature review along with gathering the data from the study participants, it would appear that students are “put first” or best served when they are provided pathways to complete their academic training; enrollment and retention are of course pre-requisites for this accomplishment. While much of the responsibility of completing this process rests upon the individual student, it should be understood that all stakeholders are under obligation to assist in ensuring that the student successfully completes all three functions. Therefore, the Primary Functions model has the potential to assist leaders in cutting through the often ambiguous activities required to adequately run an institution of higher learning.

Undoubtedly, students will experience more during their educational journey than simply enrolling, persisting, and completing. However, it is worth repeating that this

model encompasses all revenue needs, compliance issues, and most importantly student outcomes in that all campus activities and outcomes, including the totality of the student experience, are appendages to, or a result of, at least one of these three primary functions.

An institution's financial wellbeing and compliant student outcomes are inseparable. The process of attracting students and enrolling them into programs is in essence generating revenue. However, revenue is not earned until a student is retained. In other words, proprietary education leaders must earn the student's tuition once they have enrolled by delivering a meaningful educational experience and working in partnership with that student to ensure they persist through graduation. Institutional excellence is achieved when all functions, "Attracting, Retaining, and Completing" are in balance.

The implication for proprietary education leaders is that during policy negotiation, any regulation that infringes upon an institution's ability to perform any of the three primary functions should be vigorously opposed. Regulations such as the 90/10 Rule which place barriers for low-income students on enrolling and persisting in programs are examples of recent complacency by the sector. It would appear that since the advent of the Duncan Era regulations, the 90/10 Rule has seen little opposition from sector leaders. Consequently, with the recent deposing of many of the Duncan regulations, Congress and a handful of state governments are attempting to ratchet up the regulation by moving to an 85/15 standard which includes military and VA funding as well as state grants. It would appear as if sector leaders have allowed the proverbial camel's nose to remain in the tent for decades and are now in danger of an undesirable tent mate.

As previously stated, the literature demonstrating that the 90/10 Rule had not improved default rates and even by increasing the ratio to an extreme 45/55 Rule would

only impact default rates by 3% (General Accounting Office, 1997). The literature has also demonstrated that if such a dramatic ratio shift were to take place it would likely “cause schools to make changes, such as admitting fewer low-income students” and “might compromise student access to postsecondary education” (General Accounting Office, 1997, p. 3). Incorporating military and VA funding into the ratio will also limit opportunities for service men and women. Despite the long-standing literature on the topic, proprietary education leaders have not been successful in dissolving the rule, and most have not been as aggressive in their opposition to the 90/10 Rule since the Duncan Era regulations were introduced. Such a compromise might prove the 90/10 Rule to be a sleeping policy problem that once re-awakened to an 85/15 standard could prove disruptive to higher education access for numerous low-income students.

Additional attention might be brought to this subject through disseminating this study as well as a number of smaller publications that will be developed from the contents of this dissertation to sector leaders, association leaders, lobbyists, and other stakeholders. Various state and national associations offer workshops and conventions in which this data might be presented to sector leaders in a formal presentation. The literature review points to enough data that could be assembled into a single whitepaper demonstrating the impact of key regulations on low-income and first-generation minority students. This data could be directly utilized or built upon by stakeholders in order to raise awareness among public officials and policy makers and serve to supplement the efforts of sector leaders as they work to build trust and regulatory partnerships.

### **Implications for Future Research**

One particular question that arose over the course of this study is how regulators can employ big data to better target faltering institutions, regardless of educational sector. While out of the scope of this study, the researcher has given considerable thought to the possibilities of being able to tightly hone in on shortcomings or abuses and cite them on a case by case, institution by institution basis, as opposed to creating overarching regulations for entire sectors that may or may not be effective in their aim. Participant Four suggested that in the age of big data, it should be obvious who the faltering schools are, and where the regulatory focus should be aimed. Based on his response, it would appear that he perceives most of today's current regulatory focus to be arbitrary. He argued, "we're in an age of big data. Measure the things that we're able to measure now and use that data to identify where the outliers are, wherever they may fall." Participant Four suggests that the technology and data are available, yet are not being used to determine if the regulatory oversight needs to be in the proprietary, non-profit, or public higher education sectors, or perhaps a combination of all three. Like other participant leaders, he is willing to accept responsibility, if the data demonstrates that the problems truly reside in his sector. However, he recommends that all sectors take the same approach, and that regulators follow the data "to address outliers, wherever they may be." The researcher is intrigued by this suggestion and would recommend the topic be further explored.

Another area that might warrant more exploration is the public relations efforts of certain proprietary institutions. Some proprietary institutions have fared better from a public relations standpoint than others. While certain institutions are consistently

mentioned in literature that is unfavorable to the sector, others have remained off the radar entirely. This may be due to the particular institution's ability to successfully navigate the regulatory landscape, however it may prove useful to take a deeper dive. Such a study may prove useful to proprietary education leaders wishing to improve the reputation of their institution and may also serve regulators when considering future policy.

Finally, the theme that became dominant over the course of this study; namely, the educational needs of low-income and minority students, has left some open-ended questions unresolved. In particular, the literature as well as the data generated from study participants suggests that these student groups perform better at proprietary institutions. Potential reasons for this phenomenon have been provided in both the literature and data collected from the leader participants. However, the researcher wonders if perhaps some of these reasons are not anecdotal and speculative. It may prove productive to study this phenomenon for the purpose of determining if efforts can be duplicated across higher education sectors through a quantitative study. Community colleges and other public and non-profit institutions who serve similar demographics, may benefit from understanding why low-income and minority students have higher persistence rates at proprietary institutions.

### **Implications for Leadership Theory and Practice**

This study informs leadership theory and practice, particularly for leaders required to lead complex organizations in hyper regulated environments. Furthermore, this study is useful for leaders working under the pressures of active opposition requiring

constant pivoting in reaction to the threat of regulatory barriers and negative media.

Three key leadership challenges appear to be facing the sector. They are:

1. Overcoming ideological and political bias toward the sector.
2. Overcoming credibility challenges rooted in mis-steps by sector leaders in the past.
3. The threat of policy change.

The ideological and political bias toward the sector is evident in the literature and made clear by the qualitative data obtained from the study participants. Over the course of this study, the researcher has developed the view that proprietary education leaders work under the pressure of partisan divide, where the opposing side is vigorous in their attempts to increase regulatory oversight of the sector, and the allies of proprietary education, are generally silent supporters, often appearing indifferent to the plight of proprietary education on the whole.

Yet, critics of the sector argue that the poor reputation has been earned and cite examples of abuse dating back to the mid-Twentieth Century and the introduction of the GI Bill. While the literature does not corroborate allegations of wide-spread abuses, there are incidences that serve as support for this argument. As argued previously in this chapter, many of the charges leveled against the sector, such as profitability or loan default rates are not true examples of abuse. Fiscally viable institutions should be applauded and the literature provides ample evidences that default rates have far more to do with the student than the institution; chapter two provides a thorough discussion on this. The researcher will however agree with the critics to an extent, and sees no problem with condemning documentable abuses both past and future. The sector's reputation rests

on the shoulders of proprietary education leaders who have not been effective in combatting erroneous charges leveled at the sector, demonstrating that abuses by sector leaders are not an inherent component of proprietary education. While out of the scope of this study, it is advised that institutions determine how to employ effective public relations campaigns. There are hundreds of thousands of successful, and presumably, satisfied graduates that could perhaps tell a good story. The proprietary education sector is suffering from an image problem only student success stories can mitigate.

Yet despite the challenging environment, reputation hurdles, and questionable future of the proprietary education sector, the study participants demonstrated an admirable resiliency, that appears to be common among sector leaders. Over the long course of this project, the researcher has had a coffee mug situated near the keyboard that is used to hold pens and pencils. It has a silhouette of the movie character Rocky Balboa and quotes an oft repeated line from the character, “It ain’t about how hard you hit. It’s about how hard you can get hit and keep moving forward!” This popular cliché’ of a quote, seems fitting as one examines the proprietary education sector and its persistent march forward under what can be categorized as an uphill playing field. From a phenomenological standpoint, leadership appears to be a strength of the sector in contrast to the picture painted by a significant portion of the literature as demonstrated in Chapter Two.

As outlined throughout this study, the leadership challenges facing the sector are multi-varied ranging from partisan politics to brand credibility. Therefore, an examination of a single leadership theory would fall short of adequately complimenting this study. Consequently, there are a number of theories that have informed this study and

are likely to prove useful to proprietary education leaders. As touched upon in this chapter and more thoroughly in Chapter Two, both Lipman-Blumen (2006) and Greenleaf (1977) provide bookend leadership theories that are critical to overcoming the negative perception of the sector as well as avoid repeating abuses of the past.

Understanding the definition and impact of toxic leadership (Lipman-Blumen, 2006), as outlined in Chapter Two, is a quick way for leaders to clean up reputational as well as performance problems and provides a framework for avoiding future mis-steps. These would include subordinating student needs to administrative convenience or ownership profits. This reversal of priorities meets the definition of toxic leadership. Likewise, Servant Leadership (Greenleaf, 1977), a term regularly employed but rarely understood, is critical for student outcomes and continuous improvement of administrators, staff and faculty. As outlined in Chapter Two, a correct understanding of Servant Leadership and its contrast to Toxic Leadership, will be useful, if not entirely necessary for proprietary education leaders to cement the future viability of the sector. To overcome the political biases and reputational hurdles, proprietary education leaders will at minimum need to be cognizant of efforts employed to empower students as well as have an awareness of how to avoid toxic campus cultures.

As demonstrated throughout this study, proprietary education leaders perceive that they are serving a noble purpose. It is their perception that the sector does a good job in servicing the students who enroll in their institutions and that graduates are well prepared for their post academic experiences. The participants as well as the literature indicate that a number of federal regulations have proven to be obstacles in achieving the purposes of proprietary education institutions. It would appear, based on the data as well

as the literature, that a significant drive behind such regulations is ideological and partisan. However, ideologues and partisans have ample examples of abuse stories, whether accurate or not, that continually surface. This is unfortunate for proprietary education leaders because such stories, real or not, have a powerful effect on the perception of the general public. This alone can prevent a prospective student from choosing to enroll, even if data exists demonstrating favorable student outcomes at a given proprietary institution.

While sector leaders have been resilient in their quest to survive in the wake of the Duncan Regulatory Era, they appear to have an image crisis that must be overcome if the sector is going to extend its reach and influence. While proprietary education leaders may or may not care about the perception of their peers from public and private non-profit institutions, it seems apparent that synergy between higher education sectors could benefit students. For example, proprietary institutions are often innovators and early adopters of new educational technology. In fact, they pioneered adult and online learning which are now both serving as significant avenues of enrollment increase and revenue generation for public and non-profit institutions. Perhaps a significant path to reforming the reputation of proprietary education is partnership and collaboration between traditional institutions with reputations that are generally sound. As leaders accomplish this task, higher education as a whole has the potential to benefit in numerous areas ranging from new and innovative academic delivery models to expanding the opportunities for low-income and minority access to higher education.

The noble work that proprietary education leaders believe they are accomplishing has been eclipsed by the shadow of the sector's reputation. The leaders who participated

in this study provided arguments demonstrable of the integrity and value of their programmatic offerings. Yet these leaders have remained largely ineffective in diminishing bias toward the sector. It might be argued that so long as enough students continue to enroll that, the institutions will remain operational and this may be good enough. However, if the past is a teacher, the sector remains at risk for future disruption. This disruption may come in the form of regulatory changes, political shifts, or perhaps advances in educational technology. Institutions with merely adequate enrollment may therefore find it difficult to compete under the weight of added leadership pressures.

The most disruptive leadership challenge for the sector to date was the perfect storm of regulatory scrutiny and traditional higher education institutions entering into the online and adult education markets during the Duncan Era as detailed in chapter two. The National Center for Education Statistics (2018) reported that enrollment at proprietary institutions fell by 47% with nearly 13 million students migrating to public universities alone resulting in the closure of hundreds of campuses across the United States. Proprietary education leaders with weakened enrollment bases would do well to understand the impact of the Duncan Regulatory Era on their institution while simultaneously taking note of the number of public and private non-profit institutions that have transitioned to online offerings during the COVID-19 pandemic of 2020. As these institutions have made considerable investments in standing up online programs and training faculty to transition to online instruction, it is likely that public and private non-profit institutions that have previously resisted online learning may choose to remain, at least to some extent, online. With more online offerings at state funded institutions,

proprietary education leaders may be tasked with mitigating a potentially larger sector disruption than experienced during the Duncan Regulatory Era.

If a disruptive leadership crisis emerges, sector leaders will do well to understand the past and why some institutions remain standing today and why others have ceased to exist. Additionally, as leaders consider the future impact of diminishing student enrollment in the sector, adequate promotion of the benefits of their institutions will be imperative. As many of the participant researchers identified, integrity at every institutional level must never be compromised. Greenleaf (1977), argued that servant leaders create cultures of empowerment throughout all levels of the institution. University employees from faculty to entry level administrators must feel empowered rather than compelled to attain institutional success. Empowerment breeds innovation. Empowered people are more apt to find innovative ways to achieve goals. In contrast, Lipman-Blumen (2005) argued that compulsory toxic leaders do not call forth the best in people. Consequently, those who feel compelled to perform under threat seek minimal pathways to completion, and are more apt to compromise quality and ethics; something the sector can never again afford.

As proprietary education leaders prepare for the future, an examination of leadership culture will be imperative. The current reprieve from regulatory distractions may prove an appropriate time for institutions to inventory the state of their institution's culture and re-examine the leadership approaches that lead them there. Leaders who foster nimble and innovative organizations will be more apt to survive the challenges awaiting them in the future. Leaders who empower will be more likely to ensure

institutional quality and integrity, both necessary building blocks of academic credibility, and fundamental requirements if the sector is to improve its reputation.

### **Summary of the Study**

This qualitative phenomenological study sought to better understand the lived experiences of proprietary education leaders and their perception of federal regulation of their sector. During the Duncan regulatory era in higher education, strong regulatory measures were enacted as well as enforced and the consequences for failing to adhere proved severe for hundreds of now defunct college campuses across the nation (Iloh, 2016). While a considerable amount of literature exists on the regulations introduced under Secretary Duncan's tenure, most authors have focused on the merits of the rules or their impact on student loan debt repayment. Consequently, a hole exists in the current body of literature that this study sought to fill by seeking to understand the perceptions of institutional leaders regarding these regulations. In particular, the perceptions of those leaders who managed to excel in this difficult environment will help round out the current body of literature. With the future higher education regulatory landscape in motion, there is value in learning how successful leaders perceive compliance issues and what work they have done to remain compliant, particularly in areas where regulatory parameters led to narrow operating space such as the Gainful Employment and 90/10 Rules as described in the literature review. Furthermore, in an era of departure from the hyper-regulatory environment under the Trump and DeVos approaches to private sector education (Abdul-Alim, 2017), the perception of leaders who have navigated the Duncan regulatory landscape will prove insightful in analyzing its legacy and impact. Additionally, these perceptions may prove useful in determining possible future regulatory options and

considerations for policy makers. Finally, the approaches taken by these leaders in servicing large percentages of America's low-income and first-generation minority students under these regulatory controls, both failures and successes, may be instructive for leaders across the post-secondary academic landscape.

Chapter One provided an introductory background detailing the significance of the Federal Direct Loan Program (FDLP) implemented in 2010 as part of the Health Care and Education Reconciliation Act. Under the leadership of Secretary Arne Duncan, the United States Department of Education capitalized on the FDLP and ushered in an era of unprecedented post-secondary education regulation. A number of significant regulations were introduced, and while many were never fully enacted, the policy debates, and significant amount of literature produced around these regulations, has created a climate considered by proprietary education leaders as damaging to their operations.

Throughout Chapter One, the purpose of the study was provided along with the central research question. To aid this phenomenological qualitative study, Chapter One presented the following research question to guide the work: What are the perceptions of higher education leaders who worked in private sector institutions during the Duncan Regulatory Era? Within this research question four key sub-questions were also introduced to help guide this study. These are:

1. How do proprietary education leaders describe the Duncan Regulatory Era's impact on the operations of their institution?
2. Do proprietary education leaders consider the policies of this era beneficial to students?

3. How do proprietary education leaders describe the impact of these regulations on low-income and minority student populations served in large measure by proprietary education institutions?
4. What approaches to regulatory compliance should leaders of proprietary institutions take under future conditions of heightened oversight?

The aim of the study as well as the methodological overview were also presented in Chapter One. The definition of relevant terms that may not be apparent to the average reader were also explained and the chapter concluded by outlining the delimitations and limitations of the study along with the leader's role and responsibility in relation to the problem.

Chapter Two provided an extensive literature review that was outlined utilizing the regulatory history of the proprietary education sector. The vast majority of the literature served to either champion or discredit many of the federal regulations that have troubled the proprietary education sector. The literature review provides the reader with an understanding of what type of literature the researcher called upon to inform this study. In addition to this fundamental purpose, Chapter Two also provides the reader with a historical context in order to better understand the present state of the proprietary education sector.

Chapter Two also provides a description of the Duncan Regulatory Era. The literature was utilized to outline the impact and efficacy of the regulations as well as the legality and constitutionality of the negotiated rulemaking process used to enact many of the regulations. The leadership theories used to inform this study were outlined and explored in Chapter Two and reintroduced in Chapter Five to serve as a

framework for many of the researchers' suggestions. Most significant to this study was the literature detailing the impact of federal regulation on low-income and minority students. Supplemented by the data from the research participants, this phenomenon served as a significant theme throughout this study and emerged as the foundational component of the researcher's suggestions in Chapter Five.

Chapter Three provided a detailed outline of the methodology employed in this study. An overview of the research design was provided and the data sources were described. The study's ethical considerations were discussed including the need for anonymity of the research participants. Chapter Three demonstrated that the study met the standards of the Creighton University Institutional Review Board (IRB). Once the first three Chapter received IRB approval, the research was then ready to commence.

Chapter Four detailed the study data as well as the methodological process employed by this phenomenological qualitative study. Seven primary themes emerged from the phenomenological qualitative data providing insight into the perception of proprietary education leaders in the wake of the Duncan Regulatory Era. They are as follows:

Theme One: Call for Regulatory Equity.

Theme Two: Regulations Driven by Ideology.

Theme Three: Regulations Enacted in a Politically Charged Environment.

Theme Four: Compliance Creates Critical Resource Strain.

Theme Five: Culture of Compliance.

Theme Six: Regulatory Harm to Students Outweighs the Benefits.

Theme Seven: Particular Impact to Low-Income and Minority Students.

Each of these themes, expounded upon in Chapter Four, have served to inform the proposed recommendations and solutions presented in this chapter.

Lastly, the researcher utilized this, the fifth and final study chapter to lay out a case, supported by the research data and related literature detailed in chapters four and two respectively, suggesting that all stakeholders seek common alignment in regard to the higher education needs of the nation's low-income and first-generation minority students, who are in large part serviced by proprietary institutions. The researcher and the study participants are aligned in the belief that certain regulations provide barriers to higher educational access and completion pathways to these vulnerable student groups. This chapter has proposed five possible solutions to this particular challenge. The solutions are:

1. Build Relationships of Trust With Regulators.
2. Proprietary Education Leaders Take Inventory of the Role Proprietary Institutions Play in Educating Low-Income and Minority Students and Labor to Remove Barriers Impacting These Students.
3. Stakeholders Utilize a Values Hierarchy and Common Values Alignment Theory in Order to be Better Positioned in Policy Discussions with Regulators.
4. Continuing a Culture of Compliance.
5. Establish a Standard of Regulatory Equity.

This chapter has provided a treatment of each of these five solutions along with potential barriers that may prevent their implementation and a variety of implications for both proprietary education leaders and policy makers.

On the whole, this phenomenological qualitative study has provided the perceptions of proprietary education leaders who have been tasked with leading their institutions under complex and difficult conditions. Not only does this study help round out the existing literature regarding the Duncan regulatory era, it provides insight into federal regulation of higher education in general. Leaders in any highly regulated sector can benefit from the lived experiences of those who have navigated similar landscapes. Understanding both successes and failures may provide useful insights for future leaders employed with the dual task of regulatory compliance and organizational effectiveness, tasks that can at times appear to be at odds. Understanding the efficacy and impact of such regulations can also serve to inform policy makers on the consequences of hyper regulation including the barriers such environments create for low-income and minority students.

The study suggests that policy, when primarily driven by ideological and partisan priorities, can have unintended consequences. This may include negatively impacting certain values held by stakeholders that might hold greater significance on a values hierarchy than arguments presented for or against a given regulatory measure. In this case, the study challenges policy makers and proprietary education leaders alike to determine where educational access and completion pathways for low-income and minority students might be positioned in their respective values hierarchies. The study suggests that this may be the only conceivable intersection for stakeholders to find common ground. Provided that the values previously expressed by opposing sides in the higher education policy arena are subordinate to the interest of serving these key student

populations, there appears to be opportunity for proprietary education leaders and policy makers to heal a divide and together accomplish something of true benefit.

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## APPENDIX A

### Bill of Rights for Research Participants

As a participant in a research study, you have the right:

1. To have enough time to decide whether or not to be in the research study, and to make that decision without any pressure from the people who are conducting the research.
2. To refuse to be in the study at all, or to stop participating at any time after you begin the study.
3. To be told what the study is trying to find out, what will happen to you, and what you will be asked to do if you are in the study.
4. To be told about the reasonably foreseeable risks of being in the study.
5. To be told about the possible benefits of being in the study.
6. To be told whether there are any costs associated with being in the study and whether you will be compensated for participating in the study.
7. To be told who will have access to information collected about you and how your confidentiality will be protected.
8. To be told whom to contact with questions about the research, about research-related injury, and about your rights as a research subject.
9. If the study involves treatment or therapy:
  - a. To be told about the other non-research treatment choices you have.
  - b. To be told where treatment is available should you have a research-related injury, and who will pay for research-related treatment.

**APPENDIX B****Participant Research Script**

1. How long have you been a leader in the proprietary education sector?
2. In what ways do you stay informed on regulatory developments in higher education?
3. How would you define your leadership role as it pertains to institutional regulatory compliance?
4. Why do you believe the Duncan Era Regulations were enacted?
5. How would you describe the impact of the Duncan Era Regulations on your institution?
6. In what ways have the Duncan Era Regulations helped students?
7. In what way have they have not helped the students?
8. Describe any differences you are aware of, if any, between how the regulations have impacted vulnerable student populations such as low-income and minority students and the impact on traditional students.
9. Describe how your institution has reacted to the Duncan Era Regulations?
10. How would you describe the impact of the Duncan Era Regulations on the Proprietary Education Sector as a whole?
11. What leadership approaches do you believe institutions who have successfully navigated the Duncan Era Regulations employed?
12. What advice do you have for future leaders responsible for the regulatory compliance of their institution?

13. What advice or guidance would you share with future regulators and policy makers examining the proprietary education sector?

## APPENDIX C

## IRB Approval Documentation

**Institutional Review Board**

2500 California Plaza • Omaha, Nebraska 68178  
 phone: 402.280.2126 • fax: 402.280.4766 • email:  
 irb@creighton.edu

DATE: July 31, 2019

TO: Ryan Sagers  
 FROM: Creighton University IRB-02 Social Behavioral

PROJECT TITLE: [1462925-1] Dissertation in Practice  
 SUBMISSION TYPE: New Project

ACTION: DETERMINATION OF EXEMPT STATUS  
 DECISION DATE: July 31, 2019

REVIEW CATEGORY: Exemption category # 2

Thank you for your submission of New Project materials for this project. The following items were reviewed in this submission:

- Creighton - IRB Application Form - Creighton - IRB Application Form (UPDATED: 07/3/2019)
- Letter - Letter.docx (UPDATED: 07/16/2019)
- Other - Research Questions Appendix B.docx (UPDATED: 07/15/2019)
- Other - Determination of Exempt Status Sagers.pdf (UPDATED: 07/12/2019)
- Proposal - R Sagers Proposal 6-29-19.docx (UPDATED: 06/28/2019)

This project has been determined to be exempt from Federal Policy for Protection of Human Subjects as per 45CFR46.101 (b) 2.

All protocol amendments and changes are to be submitted to the IRB and may not be implemented until approved by the IRB. Please use the modification form when submitting changes.

If you have any questions, please contact Kathleen Stibbs at (402) 280-2126 or [kathleenstibbs@creighton.edu](mailto:kathleenstibbs@creighton.edu). Please include your project title and reference number in all correspondence with this committee.

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within Creighton University IRB-02 Social Behavioral's records.

## Appendix D

### **Arnie Duncan's Statements (Whitman & Duncan, 2018).**

Here are two lengthy excerpts of statements that I made as secretary of education about my intentions for the gainful employment rule. Readers may judge for themselves as to whether they demonstrate ideological bias against the for-profit sector or a hostility to the operation of the market.

One of the first times I was questioned by Republican lawmakers about the initial draft gainful employment rulemaking was in March 2010. I responded:

“We are by no means wedded to any one direction. We want to make sure students are not being abused or taken advantage of, but we don't want to be heavy-handed. ...

Placement is important to us, graduation rates are important to us, default rates are important to us, and you want to let the free market play. You also, at the ends of the free market, want to make sure bad actors aren't taking advantage of folks who are really working to try and improve their lives. I am a big believer in competition, and I think the market will play here, and bad actors will lose business." *Building a Stronger Economy: Spurring Reform and Innovation in American Education*, Hearing before the House Committee on Education and Labor, 111<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Serial No. 111-48, March 3, 2010, p. 20.

Four years later, with the benefit of multiple briefings on the gainful employment rule, I knew a lot more about career education programs but was still not declaring an ideological war against the for-profit sector. At a 2014 White House briefing, where I briefed reporters on the draft of the Department's second version of the gainful employment rule, the exchanges with the White House press corps went as follows:

**“Question:** What do you say to some of your critics who would argue that ultimately this [gainful employment rule] could wind up hurting some students by depriving them of the chance to get a higher learning opportunity?

**Secretary Duncan:** So I think I said six or seven times we want more opportunity, not less; we just want those to be high-quality opportunities. And again, many, many programs—the majority of the programs [75 percent] pass these [gainful employment] metrics. We want to see them grow, we want them serving more people. We need this sector to do well. We need more people--often, these folks who are struggling, trying to make their way up the economic ladder, this has to be a path to the middle class. So we want to expand opportunity, but it’s got to be high-quality opportunity. When that opportunity is leading to massive debt, when that opportunity is leading to massive default rates, that’s not the opportunity any of us can proud of, that’s not fair to people trying to climb the economic ladder, it’s not fair to taxpayers, and, frankly, it’s abusive.

**Question:** And, Mr. Secretary, so you’re issuing a “buyer beware” warning, basically, about for-profit colleges?

**Secretary Duncan:** No. I wouldn’t even say “buyer beware.” We just want much greater information out there. These are hardworking [people]--often single moms with two and three children trying to do the right thing. People going back to work, who want to go back to work who have been laid off. We just want them to know what graduation rates are, what’s my earning potential, what are debt rates, and just having clear information out there. We want to see good actors, great programs grow and expand to serve more folks, but where the wrong thing is happening for both people and taxpayers, we have a real problem with that.... Again, there are many players who are doing a fantastic job,

doing it the right way, really helping people get real skills that lead to real jobs.

**Question:** In the for-profit sector?

**Secretary Duncan:** Absolutely. Advanced manufacturing, IT jobs, health care jobs, green energy jobs. We just want to see more of those. ... we just want good players, good actors to grow and thrive, and want bad actors to, frankly, go away.” Press Briefing by Press Secretary and Jay Carney and Secretary of Education Arne Duncan, 3/14/2014, Office of the Press Secretary, White House, 2014.